

United States
Circuit Court of Appeals

For the Ninth Circuit.

JOSE MAYOLA,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

Transcript of Record

Upon Appeal from the District Court of the United
States for the Northern District of California,
Southern Division.

FILED
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CLERK

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INDEX

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

	Page
Arraignment	4
Amended bill of exceptions.....	9
Amended assignment of errors.....	75
Assignment of errors, Amended.....	75
Bill of exceptions, Amended.....	9
Bond to appear on appeal.....	83
Bond for costs on appeal.....	88
Certificate to transcript of record on appeal....	98
Citation on appeal.....	99
Indictment	1
Judgment	7
Order allowing appeal.....	75
Orders extending return day on citation, etc.....	94
Plea	5
Petition for appeal.....	74
Praeipce for transcript of record on appeal.....	97
Verdict	5

NAMES OF ATTORNEYS:

For Defendant and Appellant:

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San Francisco, Calif.

For Plaintiff and Appellee:

United States Attorney, San Francisco, Calif.

In the Southern Division of the United States District Court, Northern District of California.

No. 24048-S

UNITED STATES OF AMERICA

vs.

JOSE MAYOLA

NINTH COUNT: (Sec. 37 C. C. U. S.)

And the said Grand Jurors upon their oaths aforesaid, do further present: That at a time to said Grand Jurors unknown and within this Division and District, said defendants [Albert A. Armstrong, Edward A. Campbell and Jose Mayola] did unlawfully conspire among themselves, and with other persons to said Grand Jurors unknown, to commit an offense against the United States, to-wit, to make and execute and cause and procure to be made

and executed and assist in making and executing zinc and film plates of the obverse and reverse sides in the likeness of genuine plates designated for the printing of an obligation and security of the United States, to-wit, a Ten Dollar (\$10.00) Gold Certificate of the United States of the Series of 1928, and not under the direction of the Secretary of the Treasury of the United States; to have in their control, custody and possession zinc and film plates of the obverse and reverse sides made after and in the similitude of the plates from which obligations and securities of the United States have been printed, with intent to use said plates and suffer same to be used in forging and counterfeiting obligations and security of the United States, to falsely make, forge, counterfeit and alter, with intent to defraud, a certain obligation and security of the United States, to-wit, a Ten Dollar [1*] (\$10.00) Gold Certificate of the United States of the Series of 1928, and to keep in their possession and conceal, with intent to defraud, said falsely made, forged, counterfeited and altered obligation and security of the United States; and thereafter, and during the existence of this conspiracy, the said defendants committed and performed the following overt acts to effect the object of said conspiracy:

(1) That on or about November 25, 1931, at the City and County of San Francisco, in said Division and District, ALBERT A. ARMSTRONG, purchased a large copying camera.

(2) That on or about November 28, 1931, at the

*Page numbering appearing at the foot of page of original certified Transcript of Record.

City and County of San Francisco, in said Division and District, ALBERT A. ARMSTRONG purchased a transfer printing press.

(3) That on or about November 28, 1931, ~~Herbert L. Walkup~~ in his residence at 1638 8th Avenue, City and County of San Francisco, in said Division and District, furnished a room in which to print counterfeit Ten Dollar (\$10.00) Gold Certificates of the United States.

(4) That on or about April 6, 1932, in a room in a house located at 1638-8th Avenue, in the City and County of San Francisco, in said Division and District, Albert A. Armstrong printed three hundred and sixty (360) Ten Dollar (\$10.00) Gold Certificates of the United States.

(5) That on or about April 6, 1932, at the City and County of San Francisco, in said Division and District, Jose Mayola paid to Herbert L. Walkup the sum of \$500.00. * * *

GEO. J. HATFIELD,
United States Attorney.

Approved by
I. M. P.

[Endorsed]: A true Bill Bert P. Osterman, Foreman.

[Endorsed]: Filed Jul 27 1932 Walter B. Maling, Clerk, By Lyle S. Morris, Deputy Clerk. [2]

[Title of Court.]

AT A STATED TERM of the Southern Division of the United States District Court for the North-

ern District of California, held at the Court Room thereof, in the City and County of San Francisco, on Friday, the 26th day of August, in the year of our Lord one thousand nine hundred and thirty two.

Present: the Honorable, A. F. ST. SURE, Judge.

[Title of Cause.]

The defendant, Jose Mayola, was present in Court with C. F. Tramutolo, Esq., his Attorney. F. J. Perry, Esq., Asst. U. S. Atty., was present for United States. Defendant was duly arraigned, stated true name to be as contained in indictment. After hearing Attorneys, ordered case continued to Sep 13 1932 to plead. [3]

[Title of Court.]

AT A STATED TERM of the Southern Division of the United States District Court for the Northern District of California, held at the Court Room thereof, in the City and County of San Francisco, on Monday, the 31st day of October, in the year of our Lord one thousand nine hundred and thirty two.

Present: the Honorable, A. F. ST. SURE, Judge.

[Title of Cause.]

This matter came on regularly for arraignment of defendant Albert A. Armstrong and for entry of plea of defendant Jose Mayola. The motion of defendant Jose Mayola to quash indictment came on to be heard, and after argument, it is ordered that said motion be and the same is hereby denied, and

defendant allowed an exception to the ruling of the Court.

The defendant Albert A. Armstrong was present without counsel. On motion of F. J. Perry, Esq., Asst. U. S. Atty., the defendant Albert A. Armstrong was duly arraigned and plead "Not Guilty" to the indictment, with the privilege of withdrawing said plea.

The defendant Jose Mayola was present with Chauncey Tramutolo, Esq., his Attorney, and the defendant Edward A. Campbell was present in the custody of the U. S. Marshal and without an Attorney. Thereupon the defendants Jose Mayola and Edward A. Campbell each plead "Not Guilty" to the Indictment. [4]

It appearing to the Court that the defendant Albert A. Armstrong is without funds with which to employ an Attorney, it is ordered that James B. O'Connor, Esq., be and is hereby appointed as Attorney for said defendant. Further ordered that this case be continued to Nov 5 1932 to be then set for trial. [5]

[Title of Court and Cause.]

WE, THE JURY, find as to the defendants at the bar, as follows:—

EDWARD A. CAMPBELL	Not guilty	1st Count
	Not guilty	2d Count
	Not guilty	3d Count
	Not guilty	4th Count
	Not guilty	5th Count

Not guilty 6th Count
 Guilty 7th Count
 Guilty 8th Count
 Not guilty 10th Count
 Not guilty 11th Count
 Not guilty 12th Count

JOSE MAYOLA

Not guilty 1st Count
 Not guilty 2d Count
 Not guilty 3d Count
 Not guilty 4th Count
 Not guilty 5th Count
 Not guilty 6th Count
 Not guilty 7th Count
 Not guilty 8th Count
 Guilty 9th Count
 Not guilty 10th Count
 Not guilty 11th Count
 Not guilty 12th Count

PARKE UPSHUR

Foreman''

[Endorsed]: Filed December 10, 1932. Walter B. Maling, Clerk, By J. A. Schaertzer, Deputy Clerk.

[6]

In the Southern Division of the United States District Court for the Northern District of California. First Division.

No. 24048-S

Conv. Viol. Sec. 37 CCUS

THE UNITED STATES OF AMERICA

vs.

JOSE MAYOLA

JUDGMENT ON VERDICT OF GUILTY.

H. A. van der Zee, Assistant United States Attorney, and the defendant with his counsel came into Court. The defendant was duly informed by the Court of the nature of the Indictment filed on the 27th day of July, 1932, charging him with the crime of violating Section 37 CCUS of his arraignment and plea of Not Guilty; of his trial and the verdict of the Jury on the 10th day of December, 1932, to-wit:

“WE THE JURY, find as to the defendants at the bar, as follows:

EDWARD A. CAMPBELL	Not guilty	1st Count
	Not guilty	2d Count
	Not guilty	3d Count
	Not guilty	4th Count
	Not guilty	5th Count
	Not guilty	6th Count
	Guilty	7th Count

	Guilty	8th Count
	Not guilty	10th Count
	Not guilty	11th Count
	Not guilty	12th Count
JOSE MAYOLA	Not guilty	1st Count
	Not guilty	2d Count
	Not guilty	3d Count
	Not guilty	4th Count
	Not guilty	5th Count
	Not guilty	6th Count
	Not guilty	7th Count
	Not guilty	8th Count
	Guilty	9th Count
	Not guilty	10th Count
	Not guilty	11th Count
	Not guilty	12th Count
	PARKE UPSHUR	
	Foreman"	[7]

The defendant was then asked if he had any legal cause to show why judgment should not be entered herein and no sufficient cause being shown or appearing to the Court, and the Court having denied a Motion for New Trial and a Motion in Arrest of Judgment; thereupon the Court rendered its Judgment; THAT, WHEREAS, the said JOSE MAYOLA having been duly convicted in this Court of the crime of violating Section 37 C. C. U. S.

IT IS THEREFORE ORDERED AND ADJUDGED that the said JOSE MAYOLA be imprisoned in a U. S. Penitentiary to be designated

by the Attorney General of the United States for the period of TWO (2) YEARS and pay a fine in the sum of TWO THOUSAND FIVE HUNDRED (\$2500.00) DOLLARS as to Ninth Count. Further ordered that in default of the payment of said fine said defendant be further imprisoned until said fine be paid or until he be otherwise discharged in due course of law.

Judgment entered this 10th day of December, A. D. 1932.

WALTER B. MALING, Clerk,
By C. W. Calbreath,
Deputy Clerk.

[Endorsed]: Entered in Vol. 28 and Decrees at page 193. [8]

[Title of Court and Cause.]

Defendant Mayola's

AMENDED BILL OF EXCEPTIONS
on appeal from the Judgment.

Be it remembered, that the above entitled action came on regularly for trial upon the indictment and the pleas of not guilty entered by defendants Mayola and Campbell, and was tried before Honorable A. F. St. Sure, District Judge, and a jury, on December 6th, 7th, 8th, 9th and 10th, 1932; Mr. Herman Van Der Zee, Assistant United States Attorney, appearing for the plaintiff, Mr. Chauncey Tramutolo appearing as attorney for defendant Mayola, and Mr. Joseph L. Sweeney appearing as attorney for the

defendant Campbell. The indictment was in twelve counts, the defendants being named in the first count as Albert A. Armstrong, Edward A. Campbell and Jose Mayola, and referred to as "said defendants" in all of the remaining counts. Defendant Mayola was acquitted on all counts excepting the Ninth Count, which charged a conspiracy among said defendants and with other persons to the grand jurors unknown.

The government proved a conspiracy, as charged, among said [9] Armstrong, said Campbell, and one Herbert Walkup, by calling the following named witnesses,

Albert A. Armstrong,
W. R. Jarrell,
Albert Madsen,
Charles M. Wagner,
Richard L. Dineley,
J. C. Craik, Jr.,
Thomas J. Acheson,
Joseph Kraushwaar,
Sheridan Moffitt,
Phillip Geauque,
Mrs. Helen Walkup, and
Luther Whiteman,

who gave testimony tending, and sufficient, to prove the following facts:

At all times hereinafter mentioned, said Walkup lived with his wife, the witness Helen Walkup, in a bungalow at number 1638 Eighth Avenue, in San Francisco, California (hereinafter called "the Walkup house"), and owned and conducted a busi-

ness known as Walkup Map Company at number 634 California Street, San Francisco, California (hereinafter called "the Walkup office"). By 1931, Walkup was in debt and in bad financial condition. About September, 1931, two strangers, one Johnson and the defendant Armstrong, seeking employment as lithographers, called upon Walkup at the Walkup office. Walkup told them that he intended to put in a lithographing plant, but would have to wait for several weeks because the man who was to finance it was in the East, in New York or Washington. In the course of three or four weeks, or about October, 1931, Walkup asked Armstrong and Johnson whether they would consider going to South America at pay of one hundred dollars a week and bonus of ten thousand dollars at the end of a year, and when questioned as to why the pay and bonus would be so large, Walkup stated that he wanted Armstrong to go down there and counterfeit Columbia money. Armstrong and Johnson refused. Meanwhile, about the middle of 1931, defendant Campbell had requested one Richard Dineley (an exporter of arms and munitions) to introduce Campbell to a consul of [10] some Central American country, so that Campbell could broach to the consul a scheme of counterfeiting foreign bonds or money. Dineley forthwith secretly informed the San Francisco agent in charge of the Secret Service of the United States Treasury, and kept said agent secretly informed from time to time thereafter. Dineley led Campbell on until, about January, 1932, Campbell stated to Dineley that he, Campbell, had a contact with

counterfeiters, and wanted Dineley to become Campbell's agent to connect with Central American people who would enter such a transaction; and it was finally arranged that Campbell was to submit to Dineley a sample or proof of a counterfeit Colombian ten dollar bill. About a month before, Walkup had telephoned to Armstrong and requested the latter to call again at the Walkup office. Armstrong did so, and was told by Walkup that he and Campbell knew where they could buy a camera. Walkup, through Campbell, bought the camera from the witness Craik, the camera being the photographic part of a photo-engraver's outfit. Walkup and Armstrong hauled the camera in Walkup's truck to the Walkup office, where Walkup, Campbell and Armstrong installed it in a specially built dark room. A printing press was obtained and was installed by Campbell and Armstrong in the Walkup house. Armstrong had not had previous experience with a camera, and therefore spent three or four weeks practicing with it before succeeding in getting proper negatives from which to produce a proof or sample of a counterfeit Colombian note for Campbell to submit to Dineley. About January, 1932, a negative or film of a Colombian bill was photographed by Armstrong, transferred to lithographing stones (purchased in the regular course of business by Walkup from the witness Madsen, a dealer therein), and therefrom a printer's proof was struck off by Armstrong on the press in the Walkup home. Dineley called at the Walkup office, examined the

proof, and rejected it, saying that it [11] was a cheap lithograph, and that he had expected a steel engraving. When Dineley left, a quarrel arose between Campbell and Armstrong, and Armstrong ordered Campbell to leave the office, which the latter did. In the interim, however, early in January, 1932, Campbell had unsuccessfully tried to interest the witness Acheson (whose business was Latin American investments) in arranging to make deliveries of counterfeit money to such persons as Campbell might designate in Latin America. Finally, in February, 1932, Armstrong commenced preparations to counterfeit ten dollar gold certificates of the United States of America, series of 1928; made photographic films thereof with the camera at the Walkup office, transferred them to lithographing stones, and printed the counterfeits on the press at the Walkup home, a total of 1260 bills printed three to a sheet, which were later cut into single bills on a cutting machine at the Walkup office. Walkup told Armstrong that he, Walkup was going to take the counterfeit bills to Panama where he was to receive for them twenty-five per cent of their face value, or a total of three thousand dollars, with which he would return to San Francisco and start a legitimate lithographing plant in partnership with Armstrong. One of the counterfeit bills was received on April 7, 1932, by the Federal Reserve Bank of San Francisco, having been passed in San Francisco about April 6, 1932. The printing and cutting were completed by April 8, 1932, and

the press in the Walkup home was dismantled on that day. On April 9, 1932, Walkup sailed from San Francisco for Panama on the ship Virginia of the Panama Pacific Line, with the 1260 counterfeit bills in a home-made money belt on his person. Walkup subsequently returned to San Francisco with about 300 of the counterfeit bills, and told Armstrong that the deal had gone flat and that he had left the remainder of the counterfeit bills in Panama, and got nothing for them; and together they burned the remaining 300 bills. [12] Thereafter, on July 27, 1932, Secret Service agents Geauque and Moffitt searched the Walkup office and the Walkup home, and seized the camera and photographic materials and paraphernalia and a film of the counterfeit ten dollar gold note at the former, and the lithographing stones at the latter, all of which were identified and proved at the trial to have been used in the manufacture of the 1260 counterfeit gold notes; and on that day, July 27, 1932, Walkup became a suicide.

The following is the substance of all of the evidence offered and received to connect defendant Mayola with said conspiracy:

The Government called

ALBERT A. ARMSTRONG (defendant),

as a witness, who being sworn, testified:

I never had any conversation with Mr. Mayola. On the morning of April 8, 1932, Mr. Mayola came into the Walkup home. He was introduced to me, we had a drink. Mr. Walkup had three or four of

(Testimony of Albert A. Armstrong.)

the counterfeit bills in his hands, also one genuine bill, and he turned to Mayola and said, "What do you think of that?" Mr. Mayola said, "I can't tell a good one from a bad, they all look alike to me." At that time, the 1260 counterfeit bills were lying in the corner of the room covered over between pieces of thick cardboard that were put there to press them out flat. I next met Mr. Mayola on the boat on April 9, 1932; he was with Mr. Walkup and I left them together in the stateroom.

Q. Do you recall a conversation with Mr. Walkup and Mr. Mayola in April, 1932, concerning the payment for the expenses of the trip to South America?

The question was objected to by Mr. Tramutolo as leading and suggestive. The prosecutor stated that the contention of the Government was that the conspiracy is still in effect and was up [13] until the time of the arrest of the first conspirator. Thereupon, the court overruled the objection and an exception was noted.

EXCEPTION NO. 1.

A. I have never had any conversation with Mr. Mayola, nor in his presence, in regard to the payment of expenses of the trip or anything of that sort; Mr. Walkup told me that he had got \$500.00 from Mr. Mayola for the expenses of the trip and Mr. Walkup divided the \$500.00 with me, so that I could have \$250.00 of it while looking after Walkup's business while he was away; he said he might be gone three months.

(Testimony of Albert A. Armstrong.)

I have never had any conversation with Mr. Mayola concerning the counterfeit bills, nor about making counterfeit bills. I never talked with Mr. Mayola excepting two or three minutes when I met him in the Walkup home on the morning of April 8, 1932, and then I only shook hands with him and said how do you do.

The first time I heard of Mr. Mayola was along in October, 1931, in a conversation with Mr. Walkup.

Q. What was that conversation?

Mr. Tramutolo objected to the question upon the ground that the question called for hearsay. The objection was overruled and an exception noted.

EXCEPTION NO. 2.

A. Myself, Mr. Johnson and Mr. Walkup were present and I said to Mr. Walkup that I must know who these people are who want me to go to work in South America, and Mr. Walkup said that it was his next door neighbor, Mr. Mayola, who was going to put over a big deal in South America and was going to put in the lithograph plant.

Cross-Examination by Mr. Tramutolo.

I have never been in Mr. Mayola's home, which is next door to the Walkup home. When I first met Mayola on April 8, 1932, we were just introduced and shook hands and said glad to meet you, and so forth; Mr. Walkup said, [14] "Well, the job is finished now, let's have a drink," and we had a drink together; then Mr. Walkup took him by the

(Testimony of Albert A. Armstrong.)

shoulder of his coat, turned around and picked up some bills there and said, "What do you think of these, how do they look to you?" he says, "I can't tell a good one from a bad one, they all look alike." Then the two of them went over to the corner of the room. I took more than one drink, in fact two or three, I had quite a few, there was a pint bottle of whiskey in the room. I do not remember whether Mr. Mayola took a drink or not. After Walkup drank, he was feeling pretty good. It was around nine o'clock in the morning that I met Mayola. I next saw him the next day in the stateroom on the boat. He and Walkup were together. The next time I saw Mr. Mayola was here in the courtroom when we were arraigned on this indictment.

Q. Isn't it a fact that Mr. Walkup went to South America or to Panama as he desired to get a job to refrigerate milk what was produced on a farm there belonging to Mr. Ibanez?

A. I don't know anything about that.

Q. Didn't you know that he had communicated with the International Harvester representatives here in San Francisco and asked them if they could equip him with a truck or refrigeration materials that he wanted to ship to Mr. Ibanez's place in Panama so that Mr. Ibanez could ship milk to Panama or the coast?

A. No, I never heard of it before.

Redirect Examination by Mr. Van Der Zee.

All I know about Mr. Mayola was that Mr.

(Testimony of Albert A. Armstrong.)

Walkup told me between November, 1931, and April 9, 1932, the day the boat sailed.

Mr. VAN DER ZEE: Q. What was the approximate date of the first conversation?

Mr. TRAMUTOLO: We object to any conversation unless Mr. Mayola was present.

The COURT: Overruled.

Mr. TRAMUTOLO: Exception.

EXCEPTION NO. 3. [15]

A. I would say that was along about the time when I started to talk to him about getting nervous about getting the plant in. Then when he told me that they wanted me to go down to South America, —then he told me at that time that Mr. Mayola was a big man down there and that I didn't have anything to fear in detection; it was an easy way to make ten thousand dollars; I would have all the protection from the government officials down there; I would be perfectly safe. That was what he told me at that time.

Q. Did he describe Mr. Mayola to you at that time? A. No.

Q. How did he refer to him?

A. Just referred to him as a South American he knew. He told me he was his next-door neighbor.

Q. You were asked if Mr. Walkup didn't say or if you were not advised and informed that Mr. Walkup was going to Panama in connection with some milk refrigeration process. What did he say he was going there for?

EXCEPTION NO. 4.

(Testimony of Albert A. Armstrong.)

A. He said he was going to take the counterfeit money down there and deliver it and receive payment for it down there.

Recross Examination by Mr. Tramutolo.

When I met Mr. Mayola in the Walkup home on April 8, it was before I dismantled the press. I had just started to take the press down before Mr. Walkup brought Mr. Mayola in. The counterfeiting job had been finished the night before, or on April 7, and when I went in there on the morning of the 8th the job was dried and set and we were ready to take the press down and get it out of there. [16]

The Government next called

CHARLES M. WAGNER,

as a witness, who being sworn, testified:

In April, 1932, I was steamship clerk with the Panama Pacific Line at San Francisco. The Virginia is one of the boats of that line and left San Francisco on April 9, 1932, for New York. I recognize Jose Mayola, one of the defendants, in the courtroom. On April 6, 1932, I had a conversation with him in the San Francisco office of Panama Pacific Line. At that time he purchased a ticket for himself and made a reservation of stateroom No. 318 for himself and Mr. Walkup on the Virginia. Mr. Mayola's ticket was a round-trip ticket

(Testimony of Charles M. Wagner.)

from San Francisco to New York with stop-over at Balboa, Panama. Subsequently, Mr. Walkup purchased a ticket from San Francisco to Balboa and return. The Virginia departed from San Francisco on April 8, 1932, and returned thirty-seven days later.

Cross-Examination.

Mr. Walkup purchased his ticket at a subsequent time on the same day, April 6, 1932.

The Government next called

DAVID BARRY,

as a witness, who being sworn, testified:

I am employed as a clerk by Hibernia Savings & Loan Society and have access to all of the records. There is a savings account in the name of Jose Mayola, in which a balance of \$5,000.00 stood to his credit on April 6, 1932, and on that day he withdrew \$1,000.00 in cash, leaving a balance of \$4,000.00 in the account.

The Government next called

HELEN WALKUP,

as a witness, who being sworn, testified:

I live in San Francisco at 1638 Eighth Avenue and am the widow of Herbert L. Walkup, deceased. Mr. Walkup died July 27, 1932, at the age of forty-

(Testimony of Helen Walkup.)

one. I recognize the defendant, Jose Mayola, in the courtroom. I first met him three [17] or four years ago when he first moved next door to us. He was never in our home in the year 1931, nor in 1932 until one evening about the first of April when he came over to talk to me about Mrs. Mayola. He next visited our home in the evening before he sailed for South America; Mr. Mayola and his wife and daughter came over and we talked, perhaps half an hour, about his daughter managing the boys while he was away, and then they all went home. In the morning of April 8, 1932, Mr. Mayola came over to our home. Mr. Walkup and Mr. Armstrong were there. I was not in the room where they were and did not hear any conversation. At one time, when Mr. Walkup returned from Mr. Mayola's residence, Mr. Walkup told me about a conversation between him and Mr. Mayola at which I was not present.

Q. What did Mr. Walkup say?

Mr. Tramutolo objected upon the ground that the question called for hearsay, and the court overruled the objection and an exception was noted.

EXCEPTION NO. 5.

A. He told me that Mr. Mayola said that it would be best if they carried their counterfeit bills on them, under their clothes, and that it would be better for Mr. Walkup to carry them, because Mr. Mayola was a larger man and all that around his waist would make him look much larger than nor-

(Testimony of Helen Walkup.)

mal. I told Mr. Walkup that I thought he was being foolish in taking it all.

The date Mr. Walkup sailed he carried all of the money in a sort of belt made of cloth, which had been made the night before.

I did not have a very good look at the 1260 counterfeit bills altogether, but a month or two before a couple of the bills had been finished and when they were examined, they were shown to me to see if I thought they were good; I didn't know anything about it, but they looked good to me; at that time Mr. Armstrong, Mr. Walkup and myself were present, but most times it was just Mr. Walkup and myself. I saw all the counterfeit bills in the belt [18] ready to be taken. I next saw three thousand dollars of them when Mr. Walkup came home from South America; he immediately burned them up in the kitchen stove. When the counterfeit bills were being made in my residence, I knew during all the time that they were being made.

Mr. Walkup was hard pressed financially. He told me where he was getting money for the trip.

Q. What did he say?

Mr. Tramutolo objected upon the ground that the question called for hearsay. The court overruled the objection and an exception was noted.

EXCEPTION NO. 6.

A. Two or three days before the day of sailing, Mr. Walkup told me that Mr. Mayola had agreed to give him \$500.00 out of which Mr. Walkup stated

(Testimony of Helen Walkup.)

that he was to give Mr. Armstrong some and the remainder was to finance Mr. Walkup's trip to take the bills down.

I did not see the money belt made, in which the money was carried by Mr. Walkup, but Mr. Walkup told me who made it.

Q. Whom did he say made it?

Mr. Tramutolo objected upon the ground that the question called for hearsay. The court overruled the objection and an exception was noted.

EXCEPTION NO. 7.

A. Mr. Walkup told me that Mrs. Mayola had made it.

Cross-Examination by Mr. Tramutolo.

I met Mr. Mayola about three or four years ago when he first moved next door to us; our house is number 1638 Eighth Avenue and his number is 1642. The first time Mr. Mayola was ever in our home was when he came sometime in March before he went away, to talk to me about his wife who is mentally incompetent but harmless. I have seen her sewing in her own home, but never saw her make a belt of any kind. I had [19] been in the Mayola home on several occasions. I did not see the counterfeit money put in the belt, but I saw it in the belt after it was packed and ready to be put on, that was on the night of April 8 when Mr. Walkup put the belt on to see how it would fit. The belt was made of white cloth, something like a carpenter's

(Testimony of Helen Walkup.)

apron, the bottom stitched and the top open and the seams made eight or ten pockets in which the 1260 bills were evenly distributed. Sometime in February or March, Mr. Walkup told me that Mr. Mayola was planning to go to New York via South America, but the time of departure was unsettled until about two weeks before sailing; and Mr. Walkup decided to go with him. Mr. Walkup purchased his ticket one or two days before the boat sailed. I don't remember seeing him put the money belt on with the counterfeit currency in it on the morning of the 9th when he dressed. He left the house on the morning of April 9 and went to his office and I later took the machine and picked him up at his office and drove to the boat and we met Mr. Mayola there about half an hour before the boat sailed. Mr. Walkup and Mr. Mayola occupied the same stateroom.

I knew from July, 1931, that Mr. Walkup contemplated counterfeiting. At first, he was talking about Colombian money. It must have been around October, 1931, as near as I can remember, that he first told me he was going to counterfeit American money. I first saw some counterfeit currency finished in February or March, 1932, in my home. Mr. Walkup would bring a sample out of the back room and show it to me.

Redirect Examination.

It was back in July, 1931, that Mr. Walkup talked to me about the manufacture of Colombian currency and those conversations between me and Mr.

(Testimony of Helen Walkup.)

Walkup on the subject took place at a time when he had taken Mr. Mayola downtown in his car and Mr. Walkup stated that they had discussed making Colombian [20] money. Later Mr. Walkup spoke about making American money.

Q. Between February, 1932, and April 9, the day of sailing for South America, did Mr. Walkup tell you anything about conversations with Mr. Mayola concerning counterfeit money?

Mr. Tramutolo objected upon the ground that the question called for hearsay. The court overruled the objection and an exception was noted.

EXCEPTION NO. 8.

A. Around in March Mr. Walkup told me that Mr. Mayola might take him to South America with him to dispose of the money.

Q. Did he mention names of other persons to be concerned with that counterfeit money?

Mr. Tramutolo objected upon the ground that the question was leading and suggestive. The court overruled the objection and an exception was noted.

EXCEPTION NO. 9.

A. He said Mr. Mayola knew some one in South America who could handle it.

Q. Did he mention the name of that party in South America?

Mr. Tramutolo objected upon the ground that this conspiracy terminated after the money was made. The court overruled the objection and an exception was noted.

EXCEPTION NO. 10.

(Testimony of Edward A. Campbell.)

A. He told me that Mr. Mayola introduced him to two men, Sisto Posso and Senior Ibanez, in South America, who wanted to handle the money if it was good enough.

The plaintiff rested.

Thereupon, the defendant,

EDWARD A. CAMPBELL,

called as a witness in his own behalf, being sworn, testified:

Direct Examination by Mr. Sweeney.

I was fifty-eight years old on September 26, 1932; was born in Scotland and am a citizen of [21] Canada, where I have lived most of my life. I was in the general construction business in Vancouver. On March 14, 1930, I came from Seattle to San Francisco and remained until June 28, 1930, when I returned to Vancouver, and I came back to San Francisco September 2, 1930, and remained here or in the bay region until March 2, 1932, when I went to Vancouver. I have never been in South America or Latin America, but have traveled pretty well over the United States and Canada and the old country. I built two small buildings in Seattle and a shipyard in Tacoma in 1918. (Notebook, U. S. Exhibit No. 5, shown to witness). (Pursuant to stipulation and order, said exhibit will be certified

(Testimony of Edward A. Campbell.)

by the clerk, and is hereby referred to and incorporated herein). That is mine and contains the names of people contacted by me at various times.

Cross-Examination by Mr. Van Der Zee.

I cannot say that the names and addresses in the notebook, U. S. Exhibit No. 5, are all in my handwriting; some of them are and there may be some that are not; that notebook was in my possession when I was arrested in British Columbia, at which time I had owned it probably about a year. I cannot approximate the time when the name of Jose Mayola was written in the book, nor can I say when the names of Mr. Acheson and J. C. Craik were written. I took the names out of an old book and entered all of them at one time. I like to keep two address books, so if I lost one I would have the other. I like to keep the names and addresses of parties I meet. I met Mr. Mayola about July 1, 1931. I cannot say whether his name was in the old book, I may have copied his name from the old book but could not say. I wrote in the book the notation, "J. A. Mayola, 508 Adam Grant Building, Mr. Neal," with notation, "Columbia," and "Home 1642 Eighth Avenue," in the lower lefthand corner. I think this book was made up in 1931 and it might have been August or September, 1931, that I wrote that. The occasion of writing that particular name, address, and notation, "Columbia," was that I always put the [22] business address and home address to; and as regards Colombia, Mr. Mayola

(Testimony of Edward A. Campbell.)

spoke about mines in Colombia and it was only to bring my memory back to what I had met him about. I wrote in the book the notation, "H. G. Walkup Map Company, 634 California Street, Exbrook 3364," but cannot approximate the time when, and I do not know the occasion for writing that.

Redirect Examination by Mr. Sweeney.

The notebook, U. S. Exhibit No. 5, is in alphabetical order, and contains the names of many people.

Q. I see the name of Frank Noon—you had no business transaction with him—Did you ever meet him? A. Just once.

Q. I notice the name of Mr. Lurie; did you ever meet him? A. Once in Vancouver.

Cross-Examination by Mr. Tramutolo.

When I met Mr. Mayola in July, 1931, it was at his office, 114 Sansome Street, Adam Grant Building, and Mr. Walkup and Mr. Roland were with me; and at that time I talked to Mr. Mayola with regard to mining propositions that he owned in Colombia. I met Mr. Mayola just once after that, in the Walkup office, about October, 1931, when I brought some boat plans to present to Mr. Mayola. Mr. Walkup had told me that Mr. Mayola had stated that the Colombian government had passed a subsidy act for a line of boats between Colombia and New York, and that Mr. Mayola was looking for three vessels of a certain size, and I obtained the

(Testimony of Edward A. Campbell.)

plans to show to Mr. Mayola (boat plans shown to witness), that is the plan that I handed to Mr. Mayola; my purpose was to earn a commission, which I was to be paid if Mr. Mayola purchased the boats.

I was extradited from Vancouver and brought to San Francisco. I did not see the affidavit of Herbert Walkup that was used in my extradition hearing in Vancouver. I presume that his affidavit was used in the hearing.

Mr. TRAMUTOLO: I now ask that the Government furnish me, [23] if they will, with the original affidavit of Mr. Herbert Walkup, dated June 30, 1932.

Thereupon, Mr. Van Der Zee stated that he did not have the document, but they would cause a search to be made for it; he said that he did have a statement made by Herbert Walkup on July 1, 1932, if counsel wished to use it. Mr. Tramutolo replied that he did not want that one, but wanted the one of June 30, 1932.

Mr. VAN DER ZEE: If it is the purpose of counsel to show what Mr. Walkup stated with regard to this transaction, here is the statement dated July 1, 1932, and he is welcome to use it.

Mr. TRAMUTOLO: I am asking for the specific statement made on June 30, 1932.

(After recess). Mr. Van Der Zee stated that he had had a search made by Secret Service Agent Jarrell, and was prepared to offer every statement that Mr. Walkup made for such disposition as the

(Testimony of Mr. Jarrell.)

court thought proper. Mr. Tramutolo replied that he was requesting one particular statement, specifically the one of June 30, 1932.

Thereupon, Mr. Van Der Zee recalled

MR. JARRELL

as a witness, who testified that Herbert Walkup made two statements, one on June 30, 1932, and the second one on July 1, 1932. Both of those statements were introduced at the hearing on the extradition of defendant Campbell, at which hearing I was present. The statements were not read at the hearing.

Mr. TRAMUTOLO: I ask to read that portion your Honor.

The COURT: Very well, read it.

Mr. VAN DER ZEE: We object to counsel reading a portion of this statement unless we are permitted to introduce the entire statement, and any other statements used, by Mr. Walkup, in this hearing.

The COURT: I will not say about that. You may indicate to the jury what it is you are reading from.

Mr. TRAMUTOLO: Gentlemen, this is a statement taken of Mr. Herbert [24] L. Walkup, San Francisco, on June 30, 1932—without reading all the preliminaries, I will get to the question that I think is pertinent and the one that I want to introduce into the record, it starts with asking his age, address, whether he is a native, and married, and

(Testimony of Mr. Jarrell.)

then, after being asked several other questions, this question was asked him:

“Q. What does Mr. Mayola know about it?

A. I don't think the man knows anything about the counterfeit money. I am not trying to protect the man but the man honestly was talking about mines—got power of attorney for a mine while in Panama, talked mine to two other people I know of while there. I know Mayola has promoted some big mine companies in Colombia—the Colombia Gold and Platinum Company.”

Redirect Examination of witness Jarrell by Mr.
Van Der Zee.

This statement of June 30, 1932, of Mr. Walkup, was presented entirely to the magistrate on that extradition hearing, not only the question and answer just read by Mr. Tramutolo, but all the other questions and answers also. At the same time another statement signed by Mr. Walkup and dated July 1, 1932, was also used on that extradition hearing; I recognize the signature of Thomas B. Foster on the statement of July 1, 1932, and I testified at the extradition hearing to the signature of Mr. Walkup, and I know of my own knowledge that the statement of July 1, 1932, was used in the hearing on the extradition of Mr. Campbell in conjunction with the Walkup statement of June 30, 1932.

Thereupon, Mr. Van Der Zee offered both statements, the one of June 30, 1932, and the one of July 1, 1932, in evidence, to which offer Mr. Tramu-

(Testimony of Mr. Jarrell.)

tolo objected as not being proper cross-examination and that the offer contained incompetent evidence. The court overruled the objection and received both statements as one exhibit, U. S. Exhibit No. 8, and an exception [25] was noted.

EXCEPTION NO. 11.

(Pursuant to stipulation and order, said exhibit will be certified by the clerk, and is hereby referred to and incorporated herein.)

(It was stipulated that the date of suicide of Herbert Walkup was July 27, 1932).

Next

WILLIAM T. DINNEEN,

called as a witness for defendant Mayola, being sworn, testified: I have resided in San Francisco since 1920, and have known the defendant Jose Mayola since 1918. I first met him in Colombia when I was sent down there for the Anglo Colombia Development Company. In 1922 I was again in Colombia and saw him in connection with properties, and again in 1924. I had dealings with Mr. Mayola, by way of obtaining mining properties from him for my principals in London. I know Mr. Mayola to be an extensive owner of mining properties in Colombia, and I investigated him through the Chamber of Commerce in Colombia. In April, 1932, I wired to Mr. Mayola to make inquiries for me in regard

(Testimony of William T. Dinneen.)

to the British-Panama Gold Company in Panama. I have seen Mr. Mayola's properties in Colombia. They are alluvial platinum and gold deposits. The wire that I sent to Mr. Mayola in April, 1932, was sent through Western Union. (The telegram was here received in evidence and reads as follows:

“If possible ascertain status British Panama Gold Corporation from the record. Dinneen.”

That company has concessions on each side of the canal and I wanted to learn whether it was bankrupt. I received a reply from Mr. Mayola reporting the status of the company that I inquired about. For the interests that I represent I have had large transactions with Mr. Mayola, the largest being one that I now have up with [26] London, involving 250,000 pounds, or about a million dollars at the present rate of exchange, which transaction is still in course of negotiation. I have acted for Mr. Mayola in probably seven or eight transactions with London. Up to the end of 1930, he was with my office and thereafter he had an office on the fifth floor of the building, the Adam Grant Building. I know Mr. Mayola's general reputation for truth, honesty and integrity and it is good.

Cross-Examination by Mr. Van Der Zee.

I do not particularly follow current affairs in Colombia. I sometimes read newspaper clippings sent me from there by my agent in Bogota, regarding mining legislation or something like that. I did

(Testimony of William T. Dinneen.)

not read in any newspaper clippings from Colombia around June or July, 1932, nor did I receive any, and I do not recall any newspaper stories about a counterfeit plot at that time. I read the name of Sixto Posso in the San Francisco papers. I knew that Mr. Sixto Posso was a friend of Mr. Mayola's and had talked to Mr. Mayola about him; I think it was in 1929 or 1930 when I remitted \$2,000.00 to Mr. Sixto Posso. I do not know where he is now and was never informed that he was in jail in Colombia.

The defendant Mayola next called

Frank R. Dann,
William J. Neale,
Alvero Rebolledo, and
Bertrum O'Reilly,

as witnesses, who being sworn, testified to knowledge of the general reputation of the defendant Mayola for truth, honesty and integrity and that it was good.

The defendant Mayola next called his son,

GEORGE MAYOLA,

as a witness, who being sworn, testified:

I am the son of the defendant Jose Mayola and am twenty-one years old. My father left for New York April 9, 1932. I went to the boat with him. [27] The previous day, April 8, I took my father downtown about 10:00 a. m. Mr. Walkup came to our

(Testimony of George Mayola.)

house that morning between 9:30 a. m. and 10:00 a. m. I opened the door and he was staggering around and asked me where my father was and came in, then he asked my father if he wanted to go to the Walkup home and have a drink. My father declined. Mr. Walkup again requested and then my father went over. My father was there only three or four minutes and then I took him downtown. I was with my father when he withdrew money from the Hibernia bank; he withdrew \$1,000.00. I was present when he gave Mr. Walkup \$500.00; that was on April 7 in the afternoon; my father withdrew the money the day before, around noon; my father gave the \$500.00 to Mr. Walkup at the Walkup office.

Next,

JOSE MAYOLA,

called as a witness in his own behalf, being sworn, testified:

I have resided at 1642 Eighth Avenue, San Francisco, since I came here December 9, 1928, from the Republic of Colombia, where I had previously resided in Beuna Ventura and in Dague. My family consists of my wife, three boys and two girls. During the last twenty-five years I have been engaged principally in gold and platinum mines, river navigation and ocean navigation from Buena Ventura to New York and in floating companies for pita (I do not know what you call that in English), which is a fiber from which silk is made; and for five

(Testimony of Jose Mayola.)

years I have had a concession from the Colombian government for diving for pearls in the Pacific Ocean, near the Gargona Island and for whaling and fishing. My main business is mining; I own about 600,000 acres and under power of attorney control about 500,000 acres more of alluvial gold and platinum lands in Colombia. I was educated in the School of Mines in Paris, France, and thereafter was in London four years practicing in the Polytechnic School, and thereafter took some courses in bookkeeping [28] and practicing in Berry Bros. Bank, one of the largest banks in London; I was there six months because my father was a shareholder. I knew Mr. Walkup, who was my next-door neighbor in San Francisco. I meet so many people, but I think it was in June or July, 1931, that I met Mr. Campbell, the defendant. Mr. Walkup introduced me to him, saying that Mr. Campbell was a broker and financier that had come from Canada and he brought him to my office at Sansome Street. I told him my possibilities and the opportunities that there was in Colombia for a man of his position to invest money in gold mines and oil lands; and that I was a landowner and also in the navigation business and mining business. Afterwards, Mr. Campbell brought to me one or two plans of some boat, I mean used old boats you know, because I had a kind of concession over there in Colombia. They issued some national laws there to protect the merchant marine in Colombia, and I had long talks with prominent people in Colombia

(Testimony of Jose Mayola.)

and they made insinuations to me to try to get boats of about 4000 or 5000 tons for transporting about 50 or 100 passengers, first and second class, and at a speed of about 11 to 12 miles per hour, that could make the trip from Buena Ventura right to New York, carrying coffee. I had given all the specifications to Mr. Campbell through Mr. Walkup and Mr. Campbell I guess went to some firms in San Francisco and got me an option to buy those boats, provided those boats will satisfy my clients in Colombia. I sent Mr. Campbell's plans and the prices to my clients and they told me they could not take those boats, because they were second-hand boats, old fashion boats, and they wanted some boats with better speed and better arrangement. The only time I ever met Mr. Campbell subsequent to that time is only here now. On April 9, 1932, I left San Francisco on the Virginia to go to New York, because when I had been in New York last year in about November, I signed a contract for working and floating mining companies with [29] Mr. A. G. Dibbs; he is the general manager of Bolivian Tin Mine Dredging Company that mine tin from the mines of Bolivia. They control the tin over the world and they have got about \$200,000,000 capital. I went to New York for the purpose of interesting the financiers there in the development of the mining industry of Colombia, because I had heard that there was a shortage of gold all over the world, and I myself having been interested twenty-five years in gold mines and platinum mines in Colombia, "Well," I said, "there is an opportunity for me to make a

(Testimony of Jose Mayola.)

good deal of money and to help my country to get ahead." That is why I went to New York and that is the reason I had to make several trips to New York, because in San Francisco I could not get people to put money, many millions of dollars, to work on all my propositions that I have in Colombia. Mr. Dibbs' address is 29 Broadway, New York. (Written agreement shown to witness). That agreement is signed by me; that agreement was signed by me and Mr. Dibbs before a notary public in New York and is a partnership agreement, because I agree with Mr. Dibbs to put into his hands all of my mining property in Colombia, including the cinnabar mines. I didn't know any financiers in New York and they didn't know me. I says to Mr. Dibbs, "You are very well up with the millionaires in New York and I here bring to you and put in your hands all of what I have in Colombia, that is 1,600,000 acres of mining land, of different mining metals and materials over there," so he agreed with me and he says, "Well, you have got to give me a good percentage." I says, "Well, it is up to you to select what you want." "Well," he says, "you give me fifty per cent and I will pay all the expenses and I will put you in touch with several people." I said, "All right, you go ahead and have a contract drawn up," and he got Chadburne & Company, who are his lawyers in New York, to draw that contract and we signed that contract. On that trip [30] during my stay in Panama, I got in touch with a lady, Mrs. Isaac, that owns large mining lands in Co-

(Testimony of Jose Mayola.)

lombia, and she gave me power of attorney on five or six mining claims, or 25 kilometers of Colombian mining claims on the river called Soledad del Nupe, and I closed a \$75,000 transaction with Mr. Dibbs on Mrs. Isaac's property. When I left San Francisco on April 9, 1932, my idea was not settled about stopping over at Panama; I had so many businesses in mind at that time that my idea was to transact my business in a day if I could, during the time the boat stayed in Panama, because the boat stays there in Panama twenty-four hours, so I says, "Well, if I can find all my people there I can go ahead with my transactions and go ahead with my trip to New York and make my contact there, because in New York I had my main business." In Panama I got powers of attorney from Mrs. Isaac, Mr. Ibanez and Mr. Sexto Posso. Mr. Posso is about 40 or 45 years old, I am 61, and I have known him since he was a boy; I have known Mr. Ibanez about 20 years. I decided to get off at Panama for several reasons: first of all, I received a cable from Mr. Dinneen telling me to make inquiries about a gold mining company there; then, in the second place, I had met a man called Mr. Thompson, who came on board the boat at Los Angeles and who was introduced to me by Mr. Walkup as a millionaire. He was traveling with his wife and they were with the captain and drank wine and champagne every day, and it seemed to me that he was a wealthy man, and I told him about my property. He told me he was engaged in tuna fishing between Los An-

(Testimony of Jose Mayola.)

geles and the coast of Mexico and that he had two or three boats and a fishing company and that tuna fishing was a very good business and that he had made a lot of money, and I talked to him about the possibilities in my country to establish a cannery in the Gargona Islands and that I had a concession for diving for pearls and for fishing whales, and my ideas was to establish in the Gargona Islands a [31] cannery to provide all of South and Central America with canned fish. Then, afterwards, we talked about the possibility of establishing navigation between Buena Ventura and New York and about the new laws issued in Colombia to protect my proposed business; and in Panama I introduced him to Mr. Posso and he authorized me to cable him to come from Pogato to Balboa. Mr. Posso is a Colombian, educated in New York. (Document in Spanish language shown to witness), that is the transaction I closed with Mr. Dibbs under the power of attorney with Mrs. Isaac, and Mr. Dibbs formed a company called the International Gold Exploiters. (Document received as an exhibit and the English translation shows a partnership agreement with regard to handling mining property on the New York Exchange, the profits to be divided between Dibbs and Mayola). I sent one or two cables from the boat to Mr. Posso to meet me at Balboa and to bring powers of attorney with regard to the cinnabar mines and the fiber plantation. Mr. Posso missed the airplane and I had to wait in Panama for him two or three days. I stayed in Panama ten

(Testimony of Jose Mayola.)

days and left there on the Pennsylvania.

Q. How did Mr. Walkup come to go to Panama?

A. Well, that is a question, I don't know. I was talking to Mr. Walkup about my business on a large scale in Colombia and sometimes he got enthusiastic and said that his map mounting business doesn't pay him at all; and he heard through my daughter that I was going to New York and afterwards to Colombia on a big deal, so he came to my house about the 20th or 25th of March and said, "Well, I hear Mr. Mayola that you are going on a big business deal to New York and Colombia," and I said, "Yes, my idea is to go over there and see what I can do," and he said, "Well, I know you are a pretty wealthy man and before you go I come to you to beg you to help me financially," and I said, "Well, Mr. Walkup, I don't think I can do that; I have a large family to support and I am going to New [32] York and I must spend a lot of money in New York because I must live in a first class hotel and I have to deal with financiers that are in a very good position there, and that is going to cost me a lot of money and I haven't got much money left." "Well," he insisted, and he nearly cried to me, he says, "Look here, you are the only man who can save me." I says, "What is the matter with you?" He says, "I have been engaged in map mounting here and during the times things were well I used to get about \$200 or \$300 a month clear, but since the crash I don't make a cent and I am running in debt every day; I don't get money enough to pay for my

(Testimony of Jose Mayola.)

expenses, to pay for the rent and interest on the mortgage on my house, and I owe about six months' rent and there are two mortgages on my house and I don't make money enough even to eat." He says, "You know that because several times you have helped me; now I beg you to help me not to lose my house and loan me a thousand dollars, and I will pay you back whenever I make good." I says, "Mr. Walkup, I have told you many times I cannot dispense with a thousand dollars, but if it is a question that you and your family, your wife and children, are going to be thrown out of your house, I will lend you \$500.00 and you can pay me whenever you make good." He showed me a bank mortgage on his home for \$4,000.00. I drew some money from my savings account in the Hibernia bank and let him have \$500.00 on April 7, the next day after I withdrew it from the bank. When I left the money with him, he says, "Well, I am going to make up my mind and I am going to try to go with you." I says, "All right, Mr. Walkup; I don't promise you anything because I might go straight to New York if possible, but I will introduce you to some of my friends that are wealthy in Panama and Colombia." I told him I got a friend there, by the name of Don Alberto Ibanez, who had about 4,000 acres and 2,000 cattle and a sugar cane plantation and three or four houses in [33] Panama and one or two houses in Anton. I bought my ticket April 6. I am used to traveling so much and I said to the ticket agent I wanted a good stateroom and

(Testimony of Jose Mayola.)

wanted to travel easy and not be put in with three or four people at a time, two is enough. He said "I guarantee you I will give you a stateroom under those conditions, because there are not many passengers on this trip." I says, "All right; there is a possibility of a friend of mine traveling with me on this trip." I was not with Mr. Walkup when he bought his ticket. At Panama I introduced Mr. Walkup to Mr. Ibanez and said, "This is a man who has possibilities and comes here to try to see if he can sell maps." I knew very well maps wouldn't sell in Panama, that is no business; and I says, "This man has told me that during the time he was a young fellow that his father and his brother had a ranch somewhere in San Mateo, and he knows something about milking cows and ranching," and I says, "Can you use this fellow over there?" Ibanez says, "Well, I don't think I can make very much use of him because he don't speak Spanish." "Well," I said, "if he can tell you something about how to milk cows and how to handle the milk and how to organize a ranch, maybe that will help you and help him, he don't need to talk very much Spanish." He says, "My chauffeur is a Jamaican and speaks English and Spanish, so I don't need a chauffeur; therefore, I will see what I can do." I says, "This man is hard up, he is in a bad fix, whatever you do for him it will help me and you and everybody else because he is always asking me for money to keep him and I want to get rid of him." I left Panama on the *Pennsylvania* and Mr. Walkup

(Testimony of Jose Mayola.)

stayed there and went to Mr. Ibanez's ranch three or four days, looking at the cows. He didn't borrow any money from Mr. Ibanez while I was there, but we were paying for his board, you know how it is. Mr. Ibanez has a big house with about ten rooms, and he was occupying one room, [34] and Mr. Posso was in one room, and me and Mr. Ibanez in another, and we had two servants and a cook, and I was paying for the food all the time because that man had no money, and he was all the time running out here and there and drinking with soldiers and sailors that are running around Panama, and he didn't seem to be doing anything and I says to myself, "I just as well pay for the food of this chap while he stays here." I asked Mr. Walkup to bring my adopted daughter from Panama to San Francisco, because he said he would not stay in Panama, that it was a very hot climate and there were very many mosquitos over there at Ibanez's place and he said it wasn't a place fit for a white man like him to live. I had my adopted daughter brought over from Colombia and was going to send her here no matter whether he came or not, and I said, "You are going back, suppose you look after this girl," and he said, "All right." Mr. Ibanez was with me in New York during 1931, and I had powers of attorney from him to deal with properties, but the people in New York said it is better to call the owner in here and let him look after his own business, so I cabled to Ibanez to come to New York. I know the date I was arrested in New York, I never

(Testimony of Jose Mayola.)

forgot that date, it was on the 2nd of July. They told me that they were Federal officials sent to arrest me because they had instructions from the Secret Service in San Francisco. They arrested me in my room on the 2nd of July, and they took me to some police station in New York and they gave me a room and a blanket and were very decent to me. They asked me a lot of questions and the next day they took me out. They asked me whether I had any connection with any counterfeiting in San Francisco or elsewhere and that injured me very much. I made a statement to those gentlemen and they wrote it out and read it to me, but did not give me a copy (production of statement demanded and produced by the government; statement dated July 2, 1932). [35] After the statement was taken, at once I was released and went about my business. On July 16, one of the same men came and arrested me again and said he got instructions from San Francisco to put me in jail. I put up the bail of \$2,000.00 and my attorney at San Francisco, Mr. Sanderson, telegraphed me to get back to San Francisco as soon as possible, and I did so without making a fight of any kind in New York. I knew I had to come to San Francisco because my family is here and I had nothing to fear, and I says, "I will go there to clear this up myself." I never talked to Mr. Walkup or anybody else about making counterfeit Colombian money or United States money. I went to Mr. Walkup's home on the morning of April 8, 1932, and I heard Mr. Armstrong testify that Mr. Walkup

(Testimony of Jose Mayola.)

showed me some counterfeit bills and that I had said that I didn't know the difference between the good bills and the bad bills, but that never occurred, that was invented by somebody. I was never in the rear room of Mr. Walkup's home, where they say all this paraphernalia was. I have been in that house but twice and all the time I was in the kitchen. I had no idea that Mr. Armstrong, Mr. Walkup, or Mr. Campbell were engaged in counterfeiting money of any kind. On the morning of April 8, Mr. Walkup came to my back door; my son was having a cup of coffee and waiting for me with the car to take me to town and I was finishing dressing in my room and my son said to me, "This fellow next door says he wants to see you." I said, "I have got no time, I have an appointment downtown about ten o'clock." My son says, "Well, the man is here, he is half drunk and he wants to see you," and I says, "That is worse," and I went into the kitchen and I asked Mr. Walkup what I could do for him and he took me by the shoulder and says, "I want you to come over and have a drink." I don't drink and I says, "You know I never drink or smoke." He says, "Oh, come along and have a drink" and he pulled me by the arm and said, "Come on, come on," so I had nothing [36] else to do but go. We went across to his house into the kitchen and there was another man in there and he says, "Meet Mr. Armstrong; this is the man who is going to take charge of my business while I am away." They began to talk nonsense and offered me a drink and

(Testimony of Jose Mayola.)

finally I says, "This is no use, I have to go, I have an appointment downtown and must go," and I stayed about four or five minutes and went out and my son and I took my car and came downtown. I heard Mrs. Walkup testify about a belt that she had been told Mrs. Mayola made to carry money in. I never had my wife make a belt and this is the first time I heard about that. Prior to my arrest in New York in this case, I had never been arrested in my life. In Colombia the Liberal party has been in power for nearly three years now and my uncle, Senor Vasquez Cobo, is the minister plenipotentiary in Paris. One of my cousins is a judge in the high tribunals in Cali and another is a senator in Bogato. I never entered into any scheme with Mr. Walkup, nor Mr. Armstrong, nor Mr. Campbell, or any one else, to violate the law of the United States or any other country. I have never tried to violate any law. I have always tried to comply with everything and respect the law of the country where I am living. The \$500.00 that I gave to Mr. Walkup was a loan to him; he was going to pay the interest on a mortgage and his rent that he owed for his office and help his family. I loaned it to him without any security, because \$500.00 don't mean anything to me. I made a notation of the loan in a book, because I always keep a memorandum of everything I do so if I die my daughter knows how my business stands. (At this point the court interrupted the testimony of the witness with the following cross-examination by the court):

(Testimony of Jose Mayola.)

The COURT: Q. Do you keep a set of books in your business?

A. I keep a memorandum book, sir.

Q. You don't keep a set of books, then. You keep a memorandum. [37] Is that it?

A. Yes; since my business is small, like it is now, I don't keep any books; but before, when I had a large business amounting to thousands of dollars, I had everything in shape; but now when I am by myself, I don't need any books.

Q. Your business is small now?

A. Well, in a sense, yes; because since I got this business put on me I stopped everything. There is nothing now.

Q. I was talking about before you were arrested. Was your business a large business or small business before you were arrested?

A. Well, my businesses—I don't know how to qualify them—because it is a small business and a large business. My business would amount to millions of dollars if I could get the people interested, as I have done; but everything is stopped now.

Q. Your business was worth a million dollars or more, provided you could sell some of these properties in Colombia; is that it?

A. Provided the properties were examined and taken over. I had options and contracts signed to that effect. No mine can be sold to anybody unless it is prospected and it is found how much money it is worth in dollars and cents per cubic yard and

(Testimony of Jose Mayola.)

how many cubic yards there are in the mine to justify the investment.

Q. We understand that. You are merely what is known in the American sense, a promoter?

A. No; I am not a promoter. I am a mine owner and a practical mining engineer. I put all my properties in the hands of promoters so they can form the company and get the capital to develop my mines.

Q. You told the jury here that you owned about 600,000 acres?

A. Yes. I have got the mining titles here.

Q. And that you controlled 500,000 more?

A. Yes, your Honor. I can prove that.

Q. But you keep no books with regard to that?

A. Well, no, because that is not producing just now. [38]

Q. I say, you keep no books of account now?

A. No, because they are not producing.

Q. All the bookkeeping you did was to make a memorandum once in awhile? A. Yes.

Q. Any profits, of course, that you would make from a business of that kind are problematical, are they not?

A. Well, not so much. For instance, in the British Platinum Gold Corporation, that was a company formed with five million dollars capital.

Q. On paper?

A. No; in dollars. We had three dredgers working in there, your Honor, and we used to extract from the ground over there about 300 ounces of

(Testimony of Jose Mayola.)

platinum every week, and an ounce of platinum we sold for \$120, each ounce, and I owned 40 per cent of that. Then we had another company in there called the Patia Syndicate——

Q. Was that sometime ago?

A. Four or five years ago.

Q. At any rate, you have no books of account in your business?

A. Well, I have got some memorandums and I left in New York and my country some books.

Q. Do you have your books back in New York?

A. Yes.

Q. Is that the memorandum you speak of?

A. Yes.

Q. Is that the book of account?

A. That is the memorandum I keep.

Q. That is the only book of account you have?

A. Yes.

Direct Examination resumed by Mr. Tramutolo.

I have always kept books in Colombia and those books are there still and they record money loaned to different people. (Plaintiff received in evidence memorandum book as Defendant's Exhibit E). (Pursuant to stipulation and order, said exhibit will be certified by the clerk, and is hereby referred to and incorporated herein). The entry of the loan to Mr. Walkup is recorded on page 154. When I went to New York, I left the book with my daughter and procured it from her upon my return. (Page 154 of the book was marked [39] Defendant's Exhibit F).

(Testimony of Jose Mayola.)

Cross-Examination by the Court.

The COURT: Q. Referring to this memorandum book, Defendant's Exhibit F, will you please read the entry in that book which refers to this loan to Walkup.

A. It says in Spanish "Le Pieste a Walkup 500.00" I loaned it. I left this with my daughter when I went away. I left that with my daughter, I left this with her as an explanation.

Q. How long had you known Walkup?

A. About three years, since I bought the house. The man who sold me the house introduced me to him as a neighbor, and to Mr. Clements, as another neighbor. Those are the only people I knew in that block.

Q. Did you meet Walkup frequently?

A. Not much, no.

Q. Were you and he very friendly?

A. I have not been over friendly with him no. He was only just trying to talk to me always when he had a chance. I never visited him, or anything, because I had no business with him.

Q. You had no business with him? A. No, sir.

Q. And, therefore, you were not very friendly with him?

A. He used to come and see me and invite me to his house, but I never went.

Q. Did he come to your house?

A. He came twice or three times. The first time, I remember, it was at Christmas. He invited me to

(Testimony of Jose Mayola.)

go over there. He was kind of drinking heavy. I said "I thank you very much, I can't go."

Q. And you didn't go? A. No.

Q. He visited your house two or three times?

A. Yes.

Q. One time was at Christmas when he invited you to come to his house? A. Yes.

Q. And you didn't go to his house? A. No.

Q. You never have been to his house but one time?

A. I had been in his house twice.

Q. When you went to Panama did you and Mr. Walkup occupy the same [40] stateroom?

A. Yes, your Honor, the same one.

Q. Nobody else in that stateroom? A. No.

Q. You felt friendly enough to him to occupy the same stateroom with him, did you not?

A. Well, I preferred to be with a man that I knew before than with somebody that I did not know who it was.

Q. You preferred to be with him than to be with a stranger: Is that it?

A. Because I could talk to him. I did not want especially to be with him. He was there. I could not ask them to put the man out. I had no especial reason. The steamship man did not put four people in there because that would be very uncomfortable.

Q. You did not wish him in your stateroom and you did not wish to ask to have him put out: is that it?

A. I had no especial reason to ask to have him

(Testimony of Jose Mayola.)

put out. I could not very well do that, because I was paying for only one bed.

Q. And you didn't have any particular reason for occupying the same room with him? A. No, sir.

Q. You knew him, and you preferred to have him with you in that stateroom, rather than a stranger, as I understand it: Is that it?

A. Well, I was not especially wishing for him. He was the man who asked the steamship agent to put him in there, I did not.

Q. You were not consulted about it, at all?

A. No.

Q. He never spoke to you about it?

A. He said, "I went to buy my ticket and I inquired which was your stateroom, and I requested the man to put me in there."

Q. He did that without your consent?

A. He did not tell me about it before he went. I bought my ticket and there were left three beds in there; I did not reserve any bed except my own, because I paid in cash. Usually when a man reserves a berth or a ticket you pay so much down so they will not dispose of the bed. I didn't do that, I paid for mine, and I only paid for my own ticket. [41]

Q. Do you wish to give the jury to understand that you were not friendly with Mr. Walkup?

A. Well, no, I was not friendly, and not an enemy.

Q. He was just a casual acquaintance of yours: Is that it?

(Testimony of Jose Mayola.)

A. Because he was living next door to me, that happens to anybody, you see; I was a stranger here in the country, and I could not talk to people or meet people, because we are afraid to go and talk to somebody that they don't know who you are, or vice versa.

Q. You were not afraid to talk to anybody, were you?

A. In the United States I understand that a man needs an introduction to talk to somebody. In my country it is not like that. We live all in one family everybody.

Q. Were you afraid to talk to people in the United States?

A. Not exactly afraid, but knowing the relations here I always look for an introduction to be able to talk business with somebody.

Q. You told us you were educated in Europe?

A. Yes, in France.

Q. And that you worked in a bank in England?

A. Yes.

Q. And I take it you have traveled around quite a bit?

A. Yes, I have been in Europe several times, and in Central America and South America.

Q. Do you mean to tell the jury that you were afraid to speak to anybody in the United States?

A. No.

Q. You wanted them to believe you were mind-ing your own business: Is that it? A. Yes.

Q. And you didn't care particularly about your neighbor, Mr. Walkup: is that it? A. Yes.

(Testimony of Jose Mayola.)

Q. He could mind his business, and you would mind yours? A. Yes.

Q. And you didn't care for him, at all? A. No.

Q. There was nothing between you, was there?

A. No, sir.

Q. Not a thing? A. No, sir.

Q. He came to your house one morning and you say he was drunk? A. Yes. [42]

Q. Was he very drunk?

A. Not falling down, but you could see that he had quite a few drinks.

Q. Your son said he was staggering: Was he staggering?

A. He was moving like that; he was a kind of a weak man, you know.

Q. Your son said he was staggering, and you said that you told your son you didn't want to have anything to do with him if he was in that condition: Is that right?

A. Yes, that is quite right. I don't like to talk to people that are drunk.

Q. But you went out and talked to him?

A. He was in my house, and my duty was to see what he wanted. I wanted to hear and help him if I could.

Q. And upon his insistence that you come with him, although you do not drink, you went with him to his house?

A. I had to, because he insisted. He took me by the arm and said, "Come on, come on, I want to have a drink, come on."

(Testimony of Jose Mayola.)

Q. You thought he would take you there by force, did you?

A. No, your Honor, because I was stronger than he was.

Q. You just told us he was a weak man. He could not compel you to go unless you wished to go?

A. No, not at all.

Q. And you went because you thought that was the best thing to do?

A. I could not very well refuse him when he asked me to go.

Q. Although you were not a drinking man.

A. No.

Q. And you went over to his house? A. Yes.

Q. You traveled on the same boat and occupied the same stateroom on your trip to Panama?

A. Yes.

Q. You were with Mr. Walkup a good deal on that trip, were you not?

A. During the day time.

Q. You got to know him quite well?

A. Yes. I was talking with my countrymen, people that speak Spanish, you know. Then we used to sit at the same table with a lady that came on board in Los Angeles, an American lady from Nicaragua. [43]

Q. You grew to know him better when you were on that trip?

A. Yes. In the night time he would stop in the smoking room, playing cards and drinking.

Q. He drank all during that trip, did he?

(Testimony of Jose Mayola.)

A. Most of the time.

Q. Was he drunk most of the time?

A. Not all the time.

Q. But he was a very hard drinker?

A. He got drunk two or three times.

Q. It was disagreeable having him in the same stateroom?

A. No, sir. I used to go to bed about eight or nine o'clock and those people stayed up drinking and gambling. I could not do that now; when I was young I did that but not now, everything hurts me.

Q. Did his actions on the boat hurt you, did they bother you?

A. I got to know him better. To tell you the truth, I saw that he was not an educated man, he was kind of a vulgar man.

Q. You didn't know him very well, didn't care for him very much, just a neighbor who was endeavoring to force his attentions upon you, and you didn't care for him, and yet you loaned him \$500?

A. Yes, but I didn't do that for himself, so much, but for his family, his wife and children, they were friends with us. \$500 didn't mean too much to me; if I lost it all right; if he makes good he will pay me. I thought when I loaned him that money he was really an honest and good man. I always heard him getting up at seven o'clock in the morning and going in his machine to work in his place, and coming home late and then going back. His wife said she saw very little of her husband, because he was a very hard-working man.

(Testimony of Jose Mayola.)

Q. When you loaned him that \$500 you thought he was in dire need of money, in great need of money?

A. I was sure of that, because I believed what he said. He showed me the mortgage for \$4000. He told me he was in debt for the rent of his office for six months.

Q. He told you all of his private affairs?

A. Yes, he did, and [44] he nearly cried.

Q. Then this \$500 I understand you gave him to pay some of his debts? A. Yes.

Q. To save his home for himself and his children? A. Yes.

Q. And, as I understand it, within a few days afterwards he told you he was going to Panama with you? A. Yes.

Q. Did you say anything to him about that?

A. I made mention to him, I said, "This is up to you, I am not taking you to Panama. I will with pleasure introduce you to my friends and try to help you over there to get a job, or do some kind of business.

Q. You didn't ask him why it was he was using the \$500 you gave him to go to Panama when he should pay the debts on the house and the debts that he owed?

A. He told me he had paid the interest and some of his debts, and he had left some money with his wife.

Q. Did he tell you how much? A. He did not.

Q. When you arrived at Panama you took

(Testimony of Jose Mayola.)

Walkup with you and introduced him to your friends, didn't you. A. I did, yes.

Q. You took him and introduced him to Posso?

A. No, he was not there; he could not come because he lost his airplane in Colombia. I introduced him to Ibanez and some other friends I had in Panama.

Q. You stayed in Ibanez's house?

A. Yes, he invited us to go over there.

Q. And I understood you to say that all the time you were a guest at Ibanez's house Walkup spent most of his time drinking liquor and carousing with sailors and soldiers?

A. Yes, he went out a great deal. He had nothing to do there except to look around and go with people.

Q. Look around and get drunk: Is that it?

A. Yes, in the night time he was mostly drunk.

Q. Most of the time, wasn't he?

A. Not every day, but he was drinking heavy. [45]

Q. And yet you trusted him to bring your adopted daughter to the States?

A. I was going to send her back. On those boats there are nurses that attend to young girls who travel by themselves. He was coming. I said, "As you are going back, you look after this girl. She doesn't speak English." He said, "All right."

Q. You put her in the care of Walkup rather than in the care of a nurse on the boat?

(Testimony of Jose Mayola.)

A. I said to him, "You go on board and deliver the girl to the nurse."

Q. You told Walkup? A. No, to Ibanez.

Q. Then it is not so that you put the girl in the care of Walkup?

A. Not exactly in his care. I said, "As you are going to San Francisco where my family is, you look after this girl." He said, "I don't speak Spanish." I said, "That is all the same."

Q. In a statement that Walkup made to Captain Foster, he said that when he was at the Ibanez ranch, or at some time when you were present, he gave Ibanez \$3000 of this counterfeit money: Is that so?

A. When I was present, you say?

Q. Yes. A. No, sir, I never saw it.

Q. Did you ever discuss counterfeit money with Walkup?

A. I never did, sir. I had no idea that that man was making counterfeit money.

Q. Just what did he tell you he wanted to go to Panama for?

A. He said, "My business is on the bum, it doesn't pay, I am running in debt every day, and I don't see no future for this business, I don't see what is the use of staying here, you say there are so many opportunities for a man in your country, I will take the chance, what do you advise me to do?" I said, "If you want to go, go; I don't tell you to go or to stay; if you decide to go I am very pleased to recommend you to my friends."

(Testimony of Jose Mayola.)

Q. You knew it was a foolish trip for him to take, did you not?

A. I could not say, because if he was, as he said, an expert dairy man, there are a good many ranchers there, and they want to make an [46] organization to make condensed milk; I said, "If you are able to organize them and get a consolidation of them all you may get good wages and a good income."

Q. You knew, as you stated, there was no business in map-making in Panama?

A. I told him that. I told him there was no use going to look for map-making over there, nobody would care for that.

Q. You introduced him to Ibanez and recommended him?

A. I said, "This man tells me he is experienced in cattle, and ranches, etc., if you can do something with him, all right." Ibanez said, "Well, this man doesn't speak Spanish." Then he thought about his chauffeur, "I have a Jamaican that speaks English, and I will talk to that man." They went away and stayed three, or four, or five days over there, I don't know how many days.

Q. When your friend Posso arrived, did you introduce him to Walkup?

A. When he arrived there Walkup was at the ranch, and I introduced Posso to Mr. Thompson and connected them about the marine and fisheries and all the other business that I had talked about. Two or three days afterwards that man came back

(Testimony of Jose Mayola.)

from the ranch; he had his legs swollen——

Q. Who had his legs swollen?

A. Walkup. There was a lot of sun over there and he got burned, he was not in good shape.

Q. Did you introduce him to Posso?

A. I did. They slept in the same room. Walkup slept on one side and Posso on the other side, in the same room.

Q. And when you left Panama you left Walkup there?

A. Yes, I left him there.

The COURT: That is all.

(After the foregoing cross-examination by the court, there followed the following

Cross-Examination by Mr. Van Der Zee, the
prosecutor.

Mr. Walkup returned to San Francisco with my adopted daughter. She traveled in a separate state-room on the same boat with him. [47] I was not told that the reason for the delay after the first time I was questioned in New York was that they were waiting for a grand jury to act in San Francisco. When I was arrested on the 16th, they said they had got instructions from San Francisco to put me in jail. When I was traveling with Mr. Walkup on the boat from San Francisco to Panama, I radioed to Mr. Posso telling him to come and meet me at Balboa, that I was with an expert on board. I never intended personally to go into the fish business that I discussed with Thompson. I in-

(Testimony of Jose Mayola.)

tended to connect Posso with Thompson. I never knew that Thompson was an ordinary smuggler, and I have not since found it out. I never inquired about him any more and don't know where he is. I connected him with Posso and went to New York to attend to my mining business. I never heard that Posso had been arrested in Colombia. I don't know that in June, 1932, he was arrested for possessing counterfeit United States notes. When I was in New York, I received a letter from him telling me about my business of the Savarno Mines. I keep in touch with Colombian affairs and read all the newspapers in that country. I have an uncle and two cousins in the government service in Colombia. I have never read anything in the Colombian papers about Posso being arrested for counterfeiting. When Mr. Walkup and I were neighbors in San Francisco, I never rode downtown with him. I was astonished to hear Mrs. Walkup testify that I did. I never rode in the coupe automobile that Mr. Walkup owned; I never went with him. Mr. Walkup visited my house twice I think. In 1931 I think he went once to the door, that was at the time he came to invite me to his house for a drink, on the occasion of a festival, which I declined. When I gave him the \$500.00, I said to him, "Aren't you going to give me a receipt?" He said, "You know I am honest, if I make good I'll pay it." Well, he had already received the money and I didn't want to make a fuss about it. The mortgage that he showed me was like all [48] mortgages, they have

(Testimony of Jose Mayola.)

forms for that and they fill them out. There are so many banks, but I think it was the American Trust bank. He says, "Here it is, I owe the interest." I didn't read it, I took his word for it. I did not know that when a person gives a mortgage to a bank, the bank keeps the mortgage. When I went in Mr. Walkup's home on the morning of April 8, 1932, the two men were in the kitchen with a bottle of whiskey, drinking. The kitchen door was closed and I did not observe whether there was a back room. They have a small table in the kitchen and they were sitting in there and drinking. I did not see Mr. Armstrong or Mr. Walkup go into the rear room. I heard Mr. Armstrong testify that I held some counterfeit ten dollar bills in my hand and examined one and stated I could not tell the difference, and I was very much astonished when I heard him say so. In the statement that I gave in New York, I did not say anything about any prospects of Mr. Walkup engaging in the dairy business; they did not ask me anything about that. The last time I heard from Sexto Posso was when I was in New York; he was informing me about a deal on the Savarno Mines. I saw Mr. Walkup drunk on the morning he sailed, I thought he had taken a drink just because he was going away. I saw him drunk on Christmas, 1931, and he was drunk on April 8, 1932.

Further Cross-Examination by the Court.

The COURT: Q. Why didn't you tell him to pay his debts and stay home?

(Testimony of Jose Mayola.)

A. That was my idea, your Honor.

Q. Why didn't you tell him that?

A. I did.

Q. Why didn't you tell him to pay his debts and stay home?

A. I did tell him. I said, "I loaned you the money so you would pay what you owed, and to go ahead with your business." He said, "This business is on the bum, map-mounting doesn't pay." I said, "I never thought it could pay, because in my country there is not such a trade." When he said, "Map-mounting," I thought he was an [49] engineer, or a man who could draw maps. When I went over there I saw him with some glue and with some boards. I said, "This is no trade."

Q. Were you over there many times?

A. Once or twice. He invited me to come and see his office. To my surprise the office was in a garage.

Q. Is it true you took the \$500 down there and gave it to him?

A. I did, yes, your Honor.

Further cross examination by Mr. Van Der Zee,
the prosecutor

I did not make reservations for both of us on the Virginia. I made my own reservation and paid for my ticket. A reservation is when you put money down to have the right to have a bed or a stateroom, that is what I call making a reservation. Mrs. Walkup's statement regarding the money belt that was made by Mrs. Mayola is not true. I never

(Testimony of Jose Mayola.)

talked with Walkup or anybody about how counterfeit money should be carried. "Yes, Mr. Walkup is slighter in build than myself, he is about your size."

The defendants rested.

The prosecution rested.

Thereupon, the court charged the jury. (The court stated the substance of the contents, separately, of each of the twelve counts of the indictment; stated, in substance, that the respective charges were laid on sections 148, 150, 151 and 37 of the Criminal Code of the United States, which sections were read by the court to the jury; the court then defined the term "similitude;" then gave to the jury the customary, conventional general instructions applicable and common to all criminal cases, upon the following subjects; credibility of witnesses; respective functions of judge and jury; falsus in uno; function of indictment; weighing testimony of defendant as a witness; weighing testimony of accomplice; burden of proof; reasonable doubt; good reputation; and thereupon [50] charged the jury under the conspiracy count, as follows):

The conspiracy to commit the crime is an entirely different offense from the crime which is the object of the conspiracy.

The first essential inquiry for your consideration is whether there existed the offense charged,

since if a conspiracy has not been shown, the defendants must be acquitted of that charge, no matter what acts they might have committed in violation of the statute. If you find there was a conspiracy, you will then determine whether or not the defendant on trial was a party thereto.

If you find there was such a conspiracy, and the defendant was a party thereto, you will next determine whether or not some of the overt acts alleged were committed by some party to the conspiracy.

The indictment alleges that the following overt acts were committed: (read to jury).

An overt act need not be criminal in nature, if considered separately and apart from the conspiracy. It may be as innocent as the act of a man walking across the street or driving an automobile, or using a telephone. But if, during the existence of the conspiracy, the overt act is done by one of the conspirators to effect the object of the conspiracy, the crime is complete, and it is complete as to every party found by you to be a member of the conspiracy, no matter which one of the parties did the overt act.

It is not necessary that all the overt acts charged be proved, but it is necessary that at least one of the overt acts charged be proved, and that it be shown to have been in furtherance of the object of the conspiracy. Other overt acts than those charged may be given in evidence, but proof of one of those charged in the indictment is indispensable.

You will observe that there are three essential elements necessary to constitute a crime under the

statute. First: There [51] must be the act of two or more persons conspiring and confederating together. Second: It must appear that the purpose of the conspiracy was to commit an offense against the United States, that is, to violate some law of the United States. And, Third: One or more of the conspirators, after the conspiracy has been formed and during its existence, must do some act to effect the object thereof.

Each of these elements is an essential element of the crime charged and must be established to your satisfaction and beyond a reasonable doubt before you can find a verdict of guilty. If these three elements are established, then the crime of conspiracy is complete, regardless of whether the purpose was accomplished or not.

The word "conspiracy" is not difficult to understand. Of course, one person cannot conspire with himself. It takes two or more persons to form a conspiracy. Participation in a conspiracy without knowledge of its existence, or knowledge of a conspiracy without participation therein, is not sufficient to warrant a conviction. Whenever two or more persons act together understandingly to commit a crime, there is a conspiracy. It is of no consequence that there may be no proof of any spoken or written word of agreement between them. Agreements to commit crime are necessarily of a secret nature and usually difficult of discovery, and it is generally necessary to prove them by proof of facts from which a jury may fairly and reasonably infer the existence of the agreement. It is seldom that express proof

can be secured. They are ordinarily proved through proof of acts and conduct of two or more persons which show that they were cooperating and working together and in unison in furtherance of a common design or criminal purpose, a common criminal object. A conspiracy may be proved by proof of facts from which it may be fairly inferred that the parties had a [52] common object and that the act or acts done by each of the parties, though the acts may be different in character, were all done in pursuance of a common end and calculated to effect a common purpose; that the parties steadily pursued the same object either by the same means or by different means, but all leading to the same result.

It is not necessary for the Government to prove that the parties to the conspiracy had been acquainted before the formation of the conspiracy. Nor is it necessary to show that after the formation of the conspiracy each of the conspirators was acquainted with all of the others, nor that each of them knew the part or parts to be performed by all of the others in furtherance of a common design or object. Whether all the parties are acquainted or not, and regardless of the part or parts played by each of them, if they act together under a common purpose to accomplish a crime, a conspiracy is shown, even though individual members of the conspiracy may have done acts in furtherance of the common design apart from and unknown to the others. They may not have previously associated together. One member of the conspiracy may know but one other member of the conspiracy. The common design or pur-

pose is the essence of the crime, and this may be made to appear when the parties steadily pursue the same object, whether acting separately or together, by the same means or different means, but always leading to the same unlawful result or object.

It is not necessary that all of the members of a conspiracy should have been parties to the criminal agreement at the time it originated, for every person who assents to the plans of a conspiracy already formed, and comes in and assists in furthering it, becomes a party to the entire conspiracy as to all of the acts done by any of the other parties thereto either before or after the time he joined it, if the act or acts of the others had been [53] done in furtherance of a common design or object during the existence of the conspiracy. It is unimportant when or where the conspiracy was formed or originated. It is sufficient to prove that during its existence and to effect the object of it one of the alleged overt acts was committed within three years prior to the day the indictment was filed and at some place within the jurisdiction of this court.

The Government is not required to prove dates exactly as charged. Proof of any date or period of time within three years before the indictment was returned by the Grand Jury is sufficient. It is characteristic of the crime of conspiracy that the acts and admissions of any one of the conspirators while engaged in the effectuation of the objects of the conspiracy are deemed to be the acts and admissions of all, and are alike binding on all. This rule also applies in a case where one of the alleged conspirators

has died since making such statements and because of such death is not made a defendant upon the trial of the other conspirators. Not so if the acts or admissions are done or made previous to entering into the conspiracy, or after the same has been dissolved or the parties have ceased their cooperation. In such case, the acts and admissions are binding only upon the one acting or speaking.

After the existence of a conspiracy has been established by competent evidence, testimony as to statements made during the existence of the conspiracy and in furtherance of its object, or relating to its object, or explanatory of acts done in furtherance of its object, are admissible in evidence, where such statements are made by persons who are co-conspirators, regardless of whether such co-conspirators are actually charged with a conspiracy or on trial for participation therein. The declarations of such parties to the conspiracy, when made during the existence of the conspiracy and in furtherance of its objects, or explanatory of acts done in [54] furtherance of its object, are admissible to the same extent as are the declarations and admissions of co-conspirators actually on trial for conspiracy, and are just as binding upon the co-conspirators or other persons in the conspiracy as are such declarations or admissions of persons actually charged with, or on trial for such conspiracy.

Defendant Armstrong is a co-conspirator in this case, if you find that a conspiracy existed, and I instruct you that in considering his testimony, you should consider his motive. If you find that he has

acted from a motive to save himself from prosecution, or from the consequences of his participation, you are entitled to take that into consideration in considering the weight that you should give the testimony of said witness Armstrong.

No defendant can be convicted of conspiracy merely because of his acquaintance or association with some or all of the conspirators, unless you are satisfied beyond a reasonable doubt that all such defendants had guilty knowledge of and were participants in the conspiracy. Each defendant is entitled to an individual and separate consideration at your hands as to his guilt or innocence.

The formation or existence of a conspiracy may be shown either by direct and positive evidence, or by circumstantial evidence. The law does not require the Government to lay its finger on the precise method or manner in which the conspiracy of the kind here alleged was entered into, for in ninety-nine cases out of a hundred it would be impossible for the Government to make such proof. The fact of a conspiracy, therefore, must always be established by evidence more or less circumstantial.

Thereupon, the jury retired and, after deliberating four hours returned into court with a verdict acquitting defendant Mayola on all counts of the indictment, excepting the Ninth, or conspiracy, Count, under which count the jury found the defendant Mayola guilty. [55]

STIPULATION

It is hereby stipulated that the foregoing bill of exceptions is in all respects full and true and may be settled and allowed as such by the above-entitled court; that the exhibits referred to therein (U. S. Exhibits Nos. 5 and 8 and Defendant's Exhibit E.) may be duly authenticated by the Clerk of the above entitled court and when transmitted to and filed with the Clerk of the Circuit Court of Appeals may be deemed a part of said bill of exceptions.

I. M. PECKHAM

United States Attorney

CHAUNCEY TRAMUTOLO

LEMUEL D. SANDERSON

Attorneys for Defendant

Jose Mayola.

ORDER

The foregoing bill of exceptions is hereby settled, allowed and authenticated as a full and true bill of exceptions; and

IT IS ORDERED, that said exhibits (U. S. Exhibits Nos. 5 and 8 and Defendant's Exhibit E.) shall be duly certified and authenticated by the Clerk of this court and transmitted to the Clerk of the United States Circuit Court of Appeals in and for

the Ninth Circuit, and thereupon shall become a part of said bill of exceptions.

Dated: San Francisco, California, April 4, 1933.

A. F. ST. SURE

United States District Judge.

[Endorsed]: Service and receipt of a copy of the within amended Bill of Exceptions is hereby admitted this 8 day of March, 1933.

I. M. PECKHAM

Attorney for

Filed Apr 4 1933. Walter B. Maling, Clerk. [56]

[Title of Court and Cause.]

PETITION FOR ALLOWANCE OF APPEAL.

Considering himself aggrieved by the judgment herein rendered and entered against him upon the verdict of the jury finding him guilty upon the ninth count of the indictment, the defendant Jose Mayola hereby prays that an appeal may be allowed in his behalf to the Circuit Court of Appeals for the Ninth Circuit, for the correction of the errors made in this case to the prejudice of said defendant, as more fully appears from the assignment of errors filed concurrently with this petition.

For which said defendant prays that this judgment may be reversed.

CHAUNCEY TRAMUTOLO

L. D. SANDERSON

Attorneys for defendant

Jose Mayola.

ORDER ALLOWING APPEAL

ORDERED, that the foregoing petition is granted and appeal allowed; cost bond fixed at \$250.00; and

IT IS FURTHER ORDERED, that the defendant Jose Mayola be admitted to bail pending the hearing of said appeal, in the sum of \$5000.00, and that execution of the [57] judgment of imprisonment be supersede and stayed, pending the determination of said appeal, upon the giving of said bail.

Dated San Francisco, the 13th day of December, 1932.

A. F. ST. SURE

United States District Judge.

[Endorsed]: Service and receipt of a copy of the within Petition for Allowance of Appeal is hereby admitted this 14th day of Dec. 1932.

GEO. J. HATFIELD

Attorney for

Filed Dec 14 1932 11:07 AM Walter B. Maling, Clerk. [58]

[Title of Court and Cause.]

AMENDED ASSIGNMENT OF ERRORS

Defendant Jose Mayola assigns the following errors in the record and proceedings in this cause:

I.

The District Court erred in admitting the following evidence over the objection and exception of defendant Mayola: during direct examination of the

Government's witness Albert A. Armstrong, the prosecutor put to him the following question: "Q. Do you recall a conversation with Mr. Walkup and Mr. Mayola in April, 1932, concerning the payment for the expenses of the trip to South America?" Counsel for defendant Mayola objected to the question as leading and suggestive, and, further, that Mr. Mayola had not been connected with the conspiracy. The prosecutor stated that the contention of the Government was that the conspiracy is still in effect and was up until the time of the arrest of the first conspirator. Thereupon, the court overruled the objection and an exception was noted (Exception No. 1). The full substance of the evidence admitted over that objection and exception was as follows: "A. I have never had any conversation with Mr. Mayola, nor in his [59] presence, in regard to the payment of expenses of the trip or anything of that sort; Mr. Walkup told me that he had got \$500.00 from Mr. Mayola for the expenses of the trip and Mr. Walkup divided the \$500.00 with me, so that I could have \$250.00 of it while looking after Walkup's business while he was away; he said he might be gone three months."

II.

The District Court erred in admitting the following evidence over the objection and exception of defendant Mayola: in the course of the direct examination of the Government's witness Albert A. Armstrong, the witness testified that the first time he heard of Mr. Mayola was along in October, 1931, in a conversation with Mr. Walkup; thereupon the

prosecutor put the following question to the witness: "Q. What was that conversation?" Counsel for defendant Mayola objected to the question upon the ground that the question called for hearsay. The Court overruled the objection and an exception was noted (Exception No. 2). The full substance of the evidence admitted over that objection and exception was as follows: "A. Myself, Mr. Johnson and Mr. Walkup were present and I said to Mr. Walkup that I must know who these people are who want me to go to work in South America, and Mr. Walkup said that it was his next door neighbor, Mr. Mayola, who was going to put over a big deal in South America and was going to put in the lithograph plant."

III.

The District Court erred in admitting the following evidence over the objection and exception of defendant Mayola: in the course of the redirect examination of the Government's witness Albert A. Armstrong, the witness testified that all that he knew about the defendant Mayola was what he was told by Mr. Walkup between November, 1931, and April 9, 1932; thereupon the prosecutor put the fol- [60] lowing question to the witness: "Q. What was the approximate date of the first conversation?" Counsel for defendant Mayola objected to the question upon the ground that the question called for hearsay. The Court overruled the objection and an exception was noted (Exception No. 3). The full substance of the evidence admitted over that objection and exception was as follows: "A. I would say that was

along about the time when I started to talk to him about getting nervous about getting the plant in. Then when he told me that they wanted me to go down to South America,—then he told me at that time that Mr. Mayola was a big man down there and that I didn't have anything to fear in detection; it was an easy way to make ten thousand dollars; I would have all the protection from the government officials down there; I would be perfectly safe. That was what he told me at that time."

IV.

The District Court erred in admitting the following evidence over the objection and exception of defendant Mayola: in the course of the direct examination of the Government's witness Helen Walkup, the witness testified that at one time, when Mr. Walkup returned from Mr. Mayola's residence, Mr. Walkup told her about a conversation between him and Mr. Mayola at which she was not present; thereupon the prosecutor put the following question to the witness: "Q. What did Mr. Walkup say?" Counsel for defendant Mayola objected to the question upon the ground that the question called for hearsay. The Court overruled the objection and an exception was noted (Exception No. 5). The full substance of the evidence admitted over that objection and exception was as follows: "A. He told me that Mr. Mayola said that it would be best if they carried their counterfeit bills on them, under their clothes, and that it would be better for Mr. Walkup to carry them, because Mr. [61] Mayola was a larger man and all that around his waist would

make him look much larger than normal. I told Mr. Walkup that I thought he was being foolish in taking it at all.”

V.

The District Court erred in admitting the following evidence over the objection and exception of defendant Mayola: in the course of the direct examination of the Government's witness Helen Walkup, the witness testified that Mr. Walkup was hard pressed financially and that he told her where he was getting money for the trip; thereupon the prosecutor put the following question to the witness: “Q. What did he say?” Counsel for defendant Mayola objected to the question upon the ground that the question called for hearsay. The Court overruled the objection and an exception was noted (Exception No. 6). The full substance of the evidence admitted over that objection and exception was as follows: “A. Two or three days before the day of sailing, Mr. Walkup told me that Mr. Mayola had agreed to give him \$500.00 out of which Mr. Walkup stated that he was to give Mr. Armstrong some and the remainder was to finance Mr. Walkup's trip to take the bills down.”

VI.

The District Court erred in admitting the following evidence over the objection and exception of defendant Mayola: in the course of the direct examination of the Government's witness Helen Walkup, the witness testified that she did not see the money belt made, in which the money was carried by Mr. Walkup, but that Mr. Walkup told her who made it;

thereupon the prosecutor put the following question to the witness: "Q. Whom did he say made it?" Counsel for defendant Mayola objected to the question upon the ground that the question called for hearsay. The Court overruled the objection and an exception was noted (Exception No. 7). The [62] full substances of the evidence admitted over that objection and exception was as follows: "A. Mr. Walkup told me that Mrs. Mayola had made it."

VII.

The District Court erred in admitting the following evidence over the objection and exception of defendant Mayola: during redirect examination of the Government's witness Helen Walkup, the prosecutor put to her the following question: "Q. Between February, 1932, and April 9, the day of sailing for South America, did Mr. Walkup tell you anything about conversations with Mr. Mayola concerning counterfeit money?" Counsel for defendant Mayola objected to the question upon the ground that the question was leading and suggestive. The Court overruled the objection and an exception was noted (Exception No. 8). The full substance of the evidence admitted over that objection and exception was as follows: "A. Around in March Mr. Walkup told me that Mr. Mayola might take him to South America with him to dispose of the money."

VIII.

The District Court erred in admitting the following evidence over the objection and exception of defendant Mayola: during redirect examination of the

Government's witness Helen Walkup, the prosecutor put to her the following question: "Q. Did he [Mr. Walkup] mention names of other persons to be concerned with that counterfeit money?" Counsel for defendant Mayola objected to the question upon the ground that this conspiracy terminated after the money was made. The Court overruled the objection and an exception was noted (Exception No. 9). The full substance of the evidence admitted over that objection and exception was as follows: "A. He said Mr. Mayola knew someone in South America who could handle it."

IX.

The District Court erred in admitting the following evi- [63] dence over the objection and exception of defendant Mayola: during redirect examination of the Government's witness Helen Walkup, the prosecutor put to her the following question: "Q. Did he [Mr. Walkup] mention the name of that party in South America?" Counsel for defendant Mayola objected to the question upon the ground that the question called for hearsay. The Court overruled the objection and an exception was noted (Exception No. 10). The full substance of the evidence admitted over that objection and exception was as follows: "A. He told me that Mr. Mayola introduced him to two men, Sisto Posso and Senior Ibanez, in South America, who wanted to handle the money if it was good."

X.

The District Court erred in admitting the following evidence over the objection and exception of

defendant Mayola: on redirect examination of the Government's witness Jarrell, the prosecutor had the witness identify two written statements (one dated June 30, 1932, and the other dated July 1, 1932), as having been signed by Mr. Walkup and as having been used by the Government in evidence before a magistrate in British Columbia in the proceeding for the extradition of the defendant Campbell; and thereupon the prosecutor offered both statements in evidence, to which offer counsel for defendant Mayola objected as not being proper cross-examination and that the offer contained incompetent evidence. The Court overruled the objection and received both statements as one exhibit, U. S. Exhibit No. 8, and an exception was noted (Exception No. 11). The said exhibit is many pages long, and has been sent up under Rule 14.

For which errors this defendant Mayola prays that the said [64] judgment may be reversed.

CHAUNCEY TRAMUTOLO,
LEMUEL D. SANDERSON,
Attorneys for defendant Jose Mayola.

The foregoing amended assignment of errors is hereby permitted.

A. F. ST. SURE,
United States District Judge.

[Endorsed]: Due service and receipt of a copy of the within Assign. of errors is hereby admitted this 4th day of April, 1933.

I. M. PECKHAM,
Attorney for.....

Filed Apr. 4, 1933. Walter B. Maling, Clerk. [65]

[Title of Court and Cause.]

SUPERSEDEAS RECOGNIZANCE.

KNOW ALL MEN BY THESE PRESENTS, that we JOSE MAYOLA as principal and W. T. DINNEEN and ADELAIDA MAYOLA of San Francisco, as sureties, are held and firmly bound unto the United States of America in full and just sum of Three Thousand Dollars (\$3,000.00) for the payment of which to the said United States of America well and truly be made, we and each of us do hereby bind ourselves, our successors, personal representatives, and assigns, jointly and severally by these presents.

SEALED with our seals and dated this 4th day of May, A. D. 1933.

WHEREAS, lately at a session of the United States District Court for the Northern District of California, Southern Division, in a suit pending in said court at San Francisco, California, between the United States of America as complainant and Jose Mayola as defendant, a judgment was rendered against said Jose Mayola on the 10th day of December, 1932, sentencing said Jose Mayola on the ninth count of the indictment herein to be imprisoned for a term of two years in a United States penitentiary to be designated by the Attorney General of the United States, [66] and also to pay a fine in the sum of Twenty-five Hundred Dollars (\$2500.00), and that in default of payment of said fine the defendant be further imprisoned until said fine is paid or he be otherwise discharged by due process of law;

AND WHEREAS, the said defendant Jose Mayola, having filed his petition for and obtained order allowing his appeal in the Clerk's office of said Court, to reverse the judgment in the aforesaid suit and a citation directed to the United States of America, citing and admonishing it to appear at the United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California;

AND WHEREAS, said order of said court allowing said appeal fixed the amount of said defendant's bail on appeal in the sum of Five Thousand Dollars (\$5,000.00);

AND WHEREAS, thereafter and on the 25th day of April, 1933, pursuant to an order of the said United States Circuit Court of Appeals duly given and made on the 24th day of April, 1933, said United States District Court duly gave and made its order reducing the amount of bail on appeal and fixing the same at the sum of Three Thousand Dollars (\$3,000.00);

AND WHEREAS, the said Jose Mayola desires said appeal to operate as a supersedeas and stay of execution and to be admitted to bail and to be permitted to be and remain at large on bail pending said proceedings on appeal to the said United States Circuit Court of Appeals for the Ninth Circuit;

NOW, the CONDITION of the above obligation is such that if the said Jose Mayola shall prosecute his appeal to effect, and if he fails to make his plea good, shall answer and shall also personally be and appear here in this Court from day to day during

the present term and from term to term of this Court thereafter, pending said proceedings on appeal, and shall surrender himself to the United States Marshal [67] of this district and be present to abide the judgment of this Court or that of the United States Circuit Court of Appeals, to serve his sentence and not depart the jurisdiction of this Court without leave thereof, then this obligation to be void; otherwise to remain in full force and virtue.

This recognizance shall be deemed and construed to contain the "express agreement" for summary judgment, and execution thereon, mentioned in Rule 34 of the District Court.

JOSE MAYOLA [Seal]

Address 1642 8th Aven.

W. T. DINNEEN [Seal]

ADELAIDA MAYOLA [Seal]

Acknowledged before me and approved as to Surety and Principal this 5th day of May, 1933.

[Seal] ERNEST E. WILLIAMS,

U. S. Commissioner, Northern Dist. California at San Francisco.

CHAUNCEY TRAMUTOLO,

LEMUEL D. SANDERSON,

Attorneys for Defendant.

704 Alexander Building,

San Francisco.

Approved by:

FRANK H. KERRIGAN,

U. S. District Judge. [68]

United States of America,
Northern District of California.—ss.

W. T. Dinneen, whose name is subscribed to the foregoing undertaking as one of the sureties thereof, being first duly sworn, deposes and says:

That I am a householder in said district and reside at No. 56 Presidio Ave., in the city of San Francisco, State of California, and by occupation Mining Engineer.

That I am worth the sum of (Three Thousand) Dollars, the sum in the said undertaking specified as the penalty thereof, over and above all my debts and liabilities and exclusive of property exempt from execution, and that my property, now standing of record in my name, consists in part as follows:

Real estate, consisting of 5000 shares of Pacific Atlantic Corp. worth over \$10000.00.

That the encumbrances on the foregoing property are as follows: Clear.

(List mortgages, trust deeds, etc.)

That my total net assets, above all liabilities and obligations on other bonds, is the sum of \$10,000.00.

That I am not surety upon outstanding penal bonds, now in force, aggregating total penalty \$.....

That the above stock is my separate property.

[Seal] W. T. DINNEEN.

Subscribed and sworn to before me this 5th day of May, A. D. 1933.

ERNEST E. WILLIAMS,
United States Commissioner for the Northern District of California.

United States of America,
Northern District of California.—ss.

Adelaida Mayola, whose name is subscribed to the fore- [69] going undertaking as one of the sureties thereof, being first duly sworn, deposes and says:

That I am a householder in said district and reside at No. 1642 8th Ave. in the city of San Francisco, State of California, and by occupation stenographer.

That I am worth the sum of (Three Thousand) Dollars, the sum in said undertaking specified as the penalty thereof, over and above all my debts and liabilities and exclusive of property exempt from execution, and that my property, now standing of record in my name, consists in part as follows:

Real estate, consisting of House (Apt.) at 234 Pierce St., worth \$12000.00; \$1000.00 in savings in Hibernia Bk.

That the encumbrances on the foregoing property are as follows: \$3500.00.

(List mortgages, trust deeds, etc.)

That my total net assets, above all liabilities and obligations on other bonds, is the sum of \$12000.00.

That I am not surety upon outstanding penal bonds, now in force aggregating total penalty \$.....

That the above is my separate property.

[Seal] ADELALDA MAYOLA.

Subscribed and sworn to before me this 5th day of May, A. D. 1933.

ERNEST E. WILLIAMS,
United States Commissioner for the Northern District of California.

[Endorsed]: Filed May 5, 1933, 12:04 P. M.
Walter B. Maling, Clerk. [70]

(COST BOND ON APPEAL)

KNOW ALL MEN BY THESE PRESENTS That we, JOSE MAYOLA, as principal and THE GREATER CITY SURETY & INDEMNITY CORP., of New York, as surety, are held and firmly bound unto UNITED STATES OF AMERICA in the full and just sum of TWO HUNDRED FIFTY (\$250.00) dollars, to be paid to the said UNITED STATES OF AMERICA certain attorney, executors, administrators or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 15th day of December, in the year of our Lord One Thousand Nine Hundred and thirty-two.

WHEREAS, lately at a District Court of the United States for the Northern District of California, Southern Division, in a suit depending in said Court, between United States of America vs. Jose Mayola, et al., No. 24048-S, a judgment and sentence was rendered against the said JOSE

MAYOLA and the said JOSE MAYOLA having obtained from said Court an order allowing an appeal to reverse the judgment and sentence in the aforesaid suit, and a citation directed to the said UNITED STATES OF AMERICA, citing and admonishing it to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be holden at San Francisco, in the State of California.

Now, the condition of the above obligation is such, That if the said JOSE MAYOLA shall prosecute his appeal to effect, and answer all his costs if he fails to make his plea good, then the above obligation to be void; else to remain in full force and virtue. [71]

This Recognizance shall be deemed and construed to contain the "Express Agreement" for summary judgment, and execution thereon, mentioned in Rule 34 of the District Court. (E. E. W.)

[Seal] JOSE MAYOLA
THE GREATER CITY SURETY
& INDEMNITY CORP.,

[Seal] By LOUIS PUCCINELLI
Its Attorney-in-Fact.

Acknowledged by Jose Mayola Principal and acknowledged before me and approved to Surety the day and year first above written.

[Seal] ERNEST E. WILLIAMS,
United States Commissioner, Northern District of
California, at San Francisco.

[Endorsed]: Filed Dec. 17, 1932, 11:08 A. M.
Walter B. Maling, Clerk. [72]

APPOINTMENT OF ATTORNEY IN FACT
THE GREATER CITY SURETY AND
INDEMNITY CORPORATION

Dated, New York City Sep 26 1932 A 3328

KNOW ALL MEN BY THESE PRESENTS:
That The Greater City Surety and Indemnity Corporation, a corporation duly organized and existing under the laws of the State of New York, and having its principal offices in the City of New York, has made, constituted and appointed, and does by these presents make, constitute and appoint LOUIS PUCCINELLI of San Francisco, its true and lawful Attorney-in-fact, with full power and authority hereby conferred in its name, place and stead, to sign, execute, acknowledge and deliver any criminal bail bond in an amount not exceeding the sum of \$2500.00 and 00 cts. hereby ratifying and confirming all of the acts of the said Attorney pursuant to the power herein given. This Power of Attorney is made and executed pursuant to, and by the authority of the following By-Laws, adopted by the Board of Directors of The Greater City Surety and Indemnity Corporation, at a meeting called and held on the 21st day of July, 1932.

“ARTICLE XII. Resident Officers and Attorneys-in-fact. Section 6. The Chairman of the Board of Directors, the President, the Chairman of the Executive Committee and the Vice-President may from time to time, appoint Attorneys-in-fact to represent and act for and on behalf of the Company, in the execution of

criminal bail bonds; provided that such appointments shall be in writing, signed by any two of the said officers, or signed by any one of the said officers and countersigned by the Secretary, or the Treasurer or any Assistant Secretary or Assistant Treasurer. Such attorneys-in-fact when so appointed shall have power and authority to act within the power granted to them but no others." [73]

THIS POWER NOT VALID UNLESS USED ON OR BEFORE DEC. 31, 32 AND CAN ONLY BE USED ONCE.

IN WITNESS WHEREOF, The Greater City Surety and Indemnity Corporation has caused these presents to be signed by its officers thereunto duly authorized, proper for the purpose, and its corporate seal to be hereunto affixed, this 26th day of September, A. D. 1932.

THE GREATER CITY SURETY AND
INDEMNITY CORPORATION,

By HENRY D. SAYER,

Vice-President.

EMANUEL FICHANDLER,

Assistant Secretary.

State of New York,
County of New York.—ss.

On this 26th day of September, 1932, before me personally came Henry D. Sayer and Emanuel Fichandler to me known, who being by me duly severally sworn, did depose and say, that he Henry

D. Sayer resides in Queens County and is the Vice President of The Greater City Surety and Indemnity Corporation, and he the said Emanuel Fichandler resides in New York County and is the Assistant Secretary of the said THE GREATER CITY SURETY AND INDEMNITY CORPORATION, the corporation described in and which executed the above instrument; that they know the seal of the said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation; and that each of the said persons signed his name thereto by like order.

GRACE FELGNER,

Notary Public Kings Co. Clk's No. 631—Reg. 3409
Clks. No. 953,—Reg. No. 3F 627 Bronx Co.
Clks. No. 56. Reg. No. 200 F 33. Commission
expires March 30, 1933.

Approved as to form.

GEO. J. HATFIELD.

Dec. 15, 1932.

FJP [74]

THE GREATER CITY SURETY AND
INDEMNITY CORPORATION

Statement of Assets and Liabilities as of March 31st,
1932.

ASSETS

Cash in Banks and on Hand.....	\$ 49,193.72
Municipal and Government Bonds.....	267,276.57
Stocks Owned	203,010.34
Accrued Interest on Bonds (not in default).....	3,353.70
Premiums in Course of Collection (not beyond 90 days).....	25,207.84
Deposits	750.00
Salvage Recoverable	78,078.40
	<hr/>
TOTAL	\$626,870.57

LIABILITIES

Reserve for Unearned Premiums.....	\$104,740.88
Reserve for Pending Claims.....	57,122.78
Reserve for Commissions, Taxes and Expenses	16,549.42
Loans Payable	30,000.00
Reserve for Depreciation in Valuation of Securities	50,000.00
	<hr/>

TOTAL LIABILITIES,

Except Capital	\$258,413.08
Capital Paid Up.....	\$262,500.00
Surplus over all Liabilities.....	105,957.49
	<hr/>
Surplus to Policyholders	368,457.49
	<hr/>
TOTAL	\$626,870.57

State of New York
County of New York—ss.

Emanuel Fichandler, being duly sworn, says: That he is Assistant Secretary of THE GREATER CITY SURETY AND INDEMNITY CORPORATION, a corporation organized and existing under the laws of the State of New York, and that the foregoing, to the best of his knowledge and belief, is a true and correct statement of the Financial Condition of said Company on the [75] 31st day of March 1932.

EMANUEL FICHANDLER

Sworn to before me this 26th day September, 1932.

GRACE FELGNER.

Notary Public, Kings Co. Clk's No. 631-Reg 3409
Clks, No. 953,-Reg. No 3F 627 Bronx Co. Clks
No. 56 Reg. No. 200 F 33 Commission expires
March 30, 1933. [76]

[Title of Court and Cause.]

ORDER

Good cause appearing, it is ORDERED:

(1) That appellant Jose Mayola may have, and he is hereby given, leave to propose, serve and lodge an amended bill of exceptions, on or before January 30, 1933.

(2) The return day of the citation on appeal

sued out by him herein is hereby enlarged to and including February 28, 1933.

Dated December 27, 1932.

A. F. ST. SURE

United States District Judge.

[Endorsed]: Service and receipt of a copy of the within ORDER is hereby admitted this 27th day of December, 1932.

GEO. J. HATFIELD

Attorney for Pltf.

Filed Dec 27 1932 10 04 AM Walter B. Maling,
Clerk. [77]

[Title of Court and Cause.]

ORDER

Good cause appearing, it is ORDERED:

(1) That appellant Jose Mayola may have and he is hereby given, leave to propose, serve and lodge an amended bill of exceptions, on or before March 1, 1933.

(2) That the return day of the citation on appeal sued out by him herein is hereby enlarged to and including April 28, 1933.

Dated January 30, 1933.

A. F. ST. SURE

United States District Judge.

[Endorsed]: Filed Jan 30 1933 2 51 PM Walter
B. Maling, Clerk. [78]

[Title of Court and Cause.]

ORDER

Good cause appearing, it is ORDERED:

(1) That appellant Jose Mayola may have, and he is hereby given, leave to propose, serve and lodge an amended bill of exceptions, on or before March 15, 1933.

(2) That the return day of the citation on appeal sued out by him herein is hereby enlarged to and including May 13, 1933.

(3) That the trial term, i. e., the November, 1932 term of this court (which, at the time of verdict herein was under standing Rule 8 of this court, automatically extended so as to comprise a period of three calendar months beginning on the date on which verdict was rendered), is hereby further extended to and including April 30, 1933.

Dated February 28, 1933.

A. F. ST. SURE

United States District Judge.

[Endorsed]: Service and receipt of a copy of the within ORDER is hereby admitted this 28 day of February 1933.

I. M. PECKHAM

Attorney for.....

Filed Feb 28 1933 10 05 AM Walter B. Maling,
Clerk. [79]

[Title of Court and Cause.]

ORDER

Good cause appearing, it is ORDERED:

(1) That appellant Jose Mayola may have, and he is hereby given, leave to propose, serve and lodge, and to obtain settlement of, an amended bill of exceptions, on or before April 15, 1933.

(2) That the return day of the citation on appeal sued out by him herein is hereby enlarged to and including June 13, 1933.

(3) That the trial term i. e., the November, 1932 term, of this court (which has been heretofore regularly and continuously extended to April 30, 1933, by standing rule and special order), is hereby further extended to and including May 30, 1933.

Dated March 14, 1933

A. F. ST. SURE

United States District Judge.

[Endorsed]: Service and receipt of a copy of the within Order is hereby admitted this 14th day of Mar. 1933.

I. M. PECKHAM

Attorney for U. S.

Filed Mar. 14, 1933 10 13 AM Walter B. Maling,
Clerk. [80]

[Title of Court and Cause.]

PRAECIPE FOR TRANSCRIPT

Hon. Walter B. Maling, Clerk,

Sir:

Please prepare transcript on appeal, containing the following:

1. The Ninth count of the indictment; and where the words, "said defendants," first appear in the third line there-of, insert the following bracket immediately thereafter: (Albert A. Armstrong, Edward A. Campbell and Jose Mayola).
2. Minutes of Arraignment and plea of not guilty.
3. Verdict.
4. Judgment.
5. Defendant Mayola's amended bill of exceptions.
6. Defendant Mayola's amended assignment of errors.
7. Cost bond.
8. Bail bond on appeal.
9. Citation.
10. All orders enlarging time for amended bill of exceptions enlarging return day of citation, and/or extending the trial term of court.
11. Praecepte.

CHAUNCEY TRAMUTOLO

LEMUEL D. SANDERSON

Attorneys for defendant

Jose Mayola.

[Endorsed]: Filed May 5, 1933 10 48 AM Walter B. Maling, Clerk. [81]

CERTIFICATE OF CLERK TO TRANSCRIPT
OF RECORD ON APPEAL

District Court of the United States

Northern District of California

I, WALTER B. MALING, Clerk of the United

States District Court, for the Northern District of California, do hereby certify that the foregoing 81 pages, numbered from 1 to 81, inclusive, contain a full, true, and correct transcript of the records and proceedings in the case of UNITED STATES OF AMERICA vs. JOSE MAYOLA, No. 24048-S, as the same now remain on file and of record in my office.

I further certify that the cost of preparing and certifying the foregoing transcript of record on appeal is the sum of Twenty Five Dollars and Seventy Five Cents (\$25.75) and that the said amount has been paid to me by the Attorneys for the appellant herein.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said District Court, this 26th day of May A. D. 1933.

[Seal]

WALTER B. MALING

Clerk.

By C. M. Taylor

Deputy Clerk. [82]

United States of America.—ss.

THE PRESIDENT OF THE UNITED STATES

To United States of America, and to the United States Attorney for the Northern District of California, Greeting:

YOU ARE HEREBY CITED AND ADMONISHED to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be holden

at the City of San Francisco, in the State of California, within thirty days from the date hereof, pursuant to an order allowing an appeal, of record in the Clerk's Office of the United States District Court for the Northern District of California, Southern Division, wherein JOSE MAYOLA is appellant, and you are appellee, to show cause, if any there be, why the judgment rendered against the said appellant, as in the said order allowing appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable A. F. ST. SURE, United States District Judge for the Northern District of California this 13th day of December, A. D. 1932.

A. F. ST. SURE,
United States District Judge.

[Endorsed]: Service of the within Citation by copy admitted this 14 day of Dec. 1932.

GEO. J. HATFIELD,
Attorney for.....

Filed Dec. 14, 1932. 11:08 A. M. Walter B. Maling,
Clerk. [83]

[Endorsed]: No. 7170. United States Circuit Court of Appeals for the Ninth Circuit. Jose Mayola, Appellant, vs. United States of America, Appellee. Transcript of Record Upon Appeal from the District Court of the United States for the Northern District of California, Southern Division.

Filed May 26, 1933.

PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

